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ABSTRACT

This Technical Committee Report discusses the general implications of creating an age-integrated society for societal institutions by concentrating on basic conceptual issues involved in thinking about the future of aging and the aged in society. An explanation of committee procedures is followed by a discussion of key topics and findings of the committee. The section on options explores alternative images of an aging society and policy implications of these alternatives. Three images of future society are outlined and the policy implications of each are illustrated as a society: (1) in which adulthood is perceived to be indivisible and in which chronological age differences are irrelevant to policymakers; (2) that redefines the social meaning and boundary of old age; and (3) that recognizes the special status and special responsibilities of older persons. This third image, veteranship, is presented as an attractive image of future society; subsequent committee recommendations for a future aging policy are based on this concept of veteranship. The appendices containing three papers on aging and an executive summary of this report are also included. (NRB)

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WHITE HOUSE CONFERENCE ON AGING, 1981

Creating an Age Integrated Society: Implications for Societal Institutions

Report and Executive Summary of the Technical Committee

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the 1981
White House
Conference
on
Aging

Report of
Technical Committee
on

CREATING AN AGE INTEGRATED SOCIETY: IMPLICATIONS FOR SOCIETAL INSTITUTIONS

TCR-15

NOTE: The recommendations of this document are not recommendations of the 1981 White House Conference on Aging, or the Department of Health and Human Services. This document was prepared for the consideration of the Conference delegates. The delegates will develop their recommendations through the processes of their national meeting in late 1981.

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I. INTRODUCTION

The Committee's Mission

Preparation for the 1981 White House Conference on Aging has been organized to consider six major issue areas, each of which has been addressed by one or more technical committee:

- Economic Security
- Physical and Mental Health
- Social Well-Being
- Older Americans as a Growing National Resource
- Creating an Age-Integrated Society
- Research

Each of these issue areas is intended to assist in our thinking about aging individuals and a maturing society as they are or might become. Exploring the meaning and implications of Creating an Age-Integrated Society is the distinctive mandate of this concommittee. This issue area has been assigned to seven technical committees, one assigned to discuss the general implications of creating an age integrated society for societal institutions and six to explore in a focused way the societal as well as personal implications of desirable social change illustrated in the economy, educational systems, religious institutions, the family, the media, and governmental structures.

What the phrase creating an age-integrated society does and does not imply must be clearly understood. The phrase is appropriately taken to imply an active and optimistic view of the modifiability of institutionalized ways of meeting human needs.

Members of a society can, and by implication should, consider the kind of future society they prefer and intend to construct. The future society should be discussed not only in terms of societal effects on the processes of aging but also in terms of the effects of aging populations on the society as a whole.

The phrase creating an age-integrated society does not necessarily imply consensus about a societal objective, about the meaning of age integration, or about how a society would most effectively implement such an objective if it set out to do so. It does imply association and mutually supportive relationships between age and youth and the need to establish a policy framework to resolve the present tensions and conflicts between the generations. The phrase, in sum, is intended to provide conference participants an opportunity to think systematically about the long-term as well as short-term future and carefully to consider alternative futures.

The seven technical committees in the issue area creating an age-integrated society, therefore, have a distinctive mandate to consider alternative futures. And, within this distinctive mandate, the technical committee on Implications for Societal Institutions has a special assignment to concentrate on some basic conceptual issues involved in thinking about the future of aging and the aged in our society, finding ways to eliminate alienation and segregation by age, and to discover the commonalities between old and young people. These basic issues cross-cut the particular, more focused concerns of the other technical committees in this issue area; the other technical committees have a mandate to explore preferred images of the society illustrated specifically in the econony, educational systems, religious institutions, the family, the media, and governmental structures.

How the Committee Proceeded

Over a period of several months the committee met for six full days to

- identify key topics to be discussed by the committee which would be important enough to bring to the attention of all participants in the 1981 White House Conference on Aging;

- identify and assemble the kind of evidence relevant to the discussion of these key topics that would illustrate and illuminate options to be considered and choices to be made;

- review proceedings of mini-conferences focused on the particular problems of special groups of older persons such as women, minorities, and the rural elderly;

- review background or position papers assigned to committee members or a consultant; and, finally,

- o share with conference participants the outcomes of our thinking, our review of evidence and options, and our recommendations.

The Committee commissioned to a consultant only one task, i.e., to review federal legislation on age discrimination. The Committee attached special significance to such legislation not as an illustration of the legislative process that produced the Age Discrimination Act but of the dilemmas of a society in transition regarding its understanding of processes of aging and of societal response to the aging of our population. The Committee commissioned to its own members background or position papers on a number of topics such as "the alternative meanings of age integration;" "the implications of alternative images of an aging society for public policy;" "changing public and private expressions of age prejudice and age integration, with special attention to the media;" "the prospects of societal guidance in the construction of the future;" and "new forms of intergenerational relationships." The products of these various assignments were reviewed by the full committee. Three papers appear as appendices to this report:

- o I, "On Age Discrimination Legislation: The 1975 Age Discrimination Act," including an introduction by Lyman Tondel and a paper by Howard Eglit;

- o II, "Aging in the Future: Futility or Fruition?" by Maggie Kuhn and Tish Sommers; and

- o III, "New Images and Attitudes," by Demetria K. McJulien.

A Note on the Committee's Data Base

Since the Committee's task was distinctly conceptual, a broad view was taken of relevant evidence. The committee gave appropriate attention to biological, behavioral, and social scientific evidence on the processes of aging and on how our society currently deals with aging individuals. Such evidence illustrates how we currently think and the assumptions we make currently about aging and about older individuals; evidence also sets boundaries on the feasibility of alternative futures we can imagine.

A review of such evidence had an intellectually liberating effect on Committee members in several important ways. The varied capacities of older adults of the same chronological age and the changing characteristics of older adults of different ages suggest that becoming old may be far more complex and amendable than previously thought. Second, a society can respond to the issues posed by an aging population in a variety of ways which appear to be more or less adequate in achieving desired goals.

The mini-conferences have added an important dimension to planning for the 1981 White House Conference on Aging. These conferences illustrate how a broad range of evidence contributes to understanding and illustrating the particular problems of aging in special populations such as women, minorities, and rural elderly. The mini-conferences also provided an opportunity to identify the adequacy of existing evidence and, on occasion, the need for new information.

The implications of the Committee's reading of the evidence is, we believe, profound. If we have drawn the correct inference, we can in fact realistically discuss alternative futures for our aging society and for older Americans. And we can do so with confidence, although with awareness that the future we prefer and intend will be limited by our ability to achieve political consensus about objectives and by our ingenuity in implementing those objectives. False assumptions about the limited capabilities of older adults for change and about the capacities of our society to be changed in positive and desired ways have been effectively challenged by evidence.

II. KEY TOPICS AND FINDINGS

New Understanding of Older Adults

The concept of the elderly has progressively lost its utility as evidence regarding the diversity of older adults has accumulated. The over 23 million adults who are 65 years of age and older differ in many significant ways. Within the broad category of older adulthood, which covers over three decades, older adults exhibit a variety of lifestyles, needs, and aspirations that reflect differences in gender, ethnicity, religious preferences, and socioeconomic status. With these variations as a caution against over-generalization, on average, younger older adults tend to retain a relatively high level of functional capacity and their continued integration in the mainstream of social life tends to be a primary concern. In contrast, on average, older older adults are increasingly at risk for functional impairment and the provision of services to counteract increased dependence tends to be a major concern.

The Changing Significance of Chronological Age

The first topic has a corollary. Chronological age has progressively lost its utility as a simple basis for understanding the conditions and capabilities of older adults and for developing social policies intended to serve them. Chronological age continues to have utility for the actuary constructing tables of life expectancy, although age-specific life expectancy and the related risk of morbidity and mortality are changing. And chronological age is clearly a convenient, though increasingly

debated way to determine eligibility for particular social programs when individualized procedures for determining eligibility are not available or are perceived to be undesirable. But, unquestionably, chronological age in the later years of life is, at best, a very gross indicator of capacity, behavior, and need.

A Society in Transition

Americans have progressively lost confidence in outmoded negative stereotypes of the later years of life. Older notions of the homogeneity of the elderly and of the utility of chronological age not only are inadequate, they are also widely perceived to be inadequate. Unfortunately, the age-ism of which American society has been appropriately accused may still be too common; but unquestionably age-ism is under attack. Public discrimination based on age is under legal attack. Negative stereotypes of older adults as they are illustrated in the media are under attack. Personal prejudice and discrimination toward older adults are increasingly difficult to defend and sustain in the face of new evidence about the competence of older adults, increased social visibility of and experience with competent older adults, and new legal expressions of social intention to incorporate older adults into the mainstream of American life.

The Committee attaches particular significance to these indications of changing imagery and attitudes (See Appendix III). These changes do not necessarily forecast a new era free of problems and dilemmas as our society rethinks the kind of society that can accommodate the interests of its citizens of all ages and attempts to implement the society it prefers and intends. But a society in transition certainly has the occasion to rethink its preferences and to mobilize itself to pursue new preferences.

Toward an Age-Integrated Society?

The Committee is aware that the phrase age-integrated society has created a considerable amount of concern and debate among the members of other committees. We understand the concern and applaud a debate that, in the opinion of the Committee, is long overdue. National objectives regarding older persons have remained very general, largely implicit, and inadequately discussed. National policy is fragmented and uncoordinated among forty-eight major federal programs in a variety of agencies that benefit older adults directly and over a hundred more that benefit them indirectly. There is a growing impression that efforts illustrate a failure of good intentions, and that the failure derives, in part, from the diffuseness of and confusion about our intentions.

The Committee concluded that the meaning of age integration and the public policy implications of pursuing one or another meaning of age integration in our society are questions of profound

importance. In fact, it concluded that these are key questions to be explored by the 1981 White House Conference on Aging. What is to be explored is whether there is consensus in our society about the kind of society we prefer in which the abilities, aspirations, and needs of persons of all ages can be appropriately served. What is to be discovered is whether we have the social ingenuity and political skill to implement the kind of society that integrates these concerns effectively.

The real risk for our society is that current confusions about societal goals and objectives will obscure the social goals and values we seek and that our attempts to adjust this or that program in ways believed to benefit a poorly defined category of people we mistakenly call the elderly will be considered sufficient. Our nation runs the risk of progressive paralysis from the contradictions and inconsistencies we affirm.

On Scarcity

At the beginning of the 1980s, our nation is more aware of limited resources than it has been at any time since the depression of the 1930s. While the "graying of our population" is not the explanation of scarcity, the aging of our population is often used to illustrate a major concern that our resources may be inadequate to provide for all our people the services we would like to provide. The "graying of populations" invites attention to the "graying of governmental (particularly the federal) budgets." Concern about scarcity, which is a source of concern in our own nation, is a genuine source of alarm in less developed nations of the world.

The Committee makes the following observations regarding current national concern about scarcity of resources:

- Our society has not developed a clear sense of equity to guide discussions of fairness and reasonableness regarding the distribution of societal resources among individuals who are at various points in the life cycle. The participants in the 1981 White House Conference on Aging should not miss the opportunity to help clarify their views on a distribution of resources that will serve persons of all ages equitably.

- Advocates of older people will need to give careful attention to how well our current resources are being used to achieve intended social and personal objectives about which we agree.

- The leadership of the United Nations, in issuing a call for a 1982 World Assembly on Aging, has joined the leadership of the White House Conference in declaring a positive and hopeful view of older persons as a societal resource that can and must be developed.

III. OPTIONS

The Committee, concluding that its primary tasks are to explore the alternative images of an aging society and the policy implications of these alternatives, has identified three different ways to think about the kind of future society we might prefer:

- o A society in which adulthood is perceived to be indivisible and in which chronological age differences are irrelevant to policy-makers;
- o A society that redefines the social meaning and boundary of old age; and
- o A society that recognizes older persons as having a special status and special responsibilities.

Each of these images of society will be outlined briefly and the policy implications of each will be illustrated.

A Commitment to Age Irrelevance: The Concept of Unitary Adulthood

In our culture, adulthood is understood to be divisible into three parts: young adulthood, middle age, and old age. Significantly, the distinction between young adulthood and middle age, while discernible in a variety of cultural patterns, has never been judged to be physiologically, functionally, or socially significant enough to warrant formal differentiation: in custom; in law; in clear role expectations; in social, political or economic participation patterns; or in public policy. The distinction between old age and middle age, on the other hand, has come, in the twentieth century at least, to be seen as a fundamental and inescapable physiological and functional transition that is, and ought to be, reflected in clear social, economic, cultural, legal, and policy categorizations.

This latter assumption is, we believe, potentially liable to radical criticism. The emergence of the anti-ageist perspective has, in effect, suggested that legal and social age categorizations, whatever their official motivations, have in practice served to devalue, exclude, confine, patronize, and waste older people.

Moreover, there are increasing arguments that assert that the alleged physiological and social grounds for such distinctions are at best ambiguous and at worst non-existent. Oldness, in other words, may be largely a cultural and perhaps even a bureaucratic invention that corresponds very little to the actual empirical realities of being old.

Impressive evidence to support this view was advanced during the campaign against mandatory retirement. In 1975, a national survey of the concerns and attitudes of and about older people suggested that the reality of aging in America did not in fact corroborate many of the generalizations which theretofore had been used to describe the supposedly characteristic psychological, physical, social, and economic circumstances of the elderly. Skepticism about the extent to which age functions as a determinant of capacity and circumstance has recently been given its most assertive formulation in professional and popular articles that contend chronological age simply does not very reliably correlate with many socially important characteristics. It does not determine and hence does not predict attitudes, health, interests, education, family relationships, work capacity, or intellect.

In our view, this thesis offers the basis for a new and clarified conception of old age. In effect, it allows us to understand advanced age as we have come to understand gender and race; that is, as a physiological distinction which history and culture have exaggerated and elaborated into an enforced social category which has come to be not only culturally useless but also detrimental to its members. Put another way, this conceptualization asserts, first of all, that there is no good reason to assume that a chronologically old person is necessarily or significantly different in capacity, aspiration, or personal circumstance from a chronologically middle aged individual; and secondly, that any policy or practice that imposes, enforces, or encourages such a differentiation is arbitrary, discriminatory, and wrong.

It is important to stress that this view of oldness does not require a denial of the greater prevalence of economic, social, and psychological hardship among the chronologically old (e.g., poverty, isolation, self-contempt). It only suggests that these characteristics are not attributable to age per se, but rather to the social handicaps and cultural meaning that history has artificially imposed on age.

Similarly, the concept of age irrelevance need not deny the increased incidence of physical and mental incapacity among the old. Rather, it insists only that these prevalences not be definitive of the role and status of the group in which they occur.

The hypothesis of age irrelevance, we believe, offers a clear goal for social change. As its end, it envisions an age-integrated, age-unconscious society in which adults of all ages would be equitably represented in the consumption and production of goods and services, in the exercise of political power, and in the use of the country's educational, cultural, recreational, and spiritual resources. Furthermore, it would be a society that would extend the same personal standards, expectations, responsibilities, opportunities, and choices to all adults, without significant differentiation according to age.

The manner and methods for effecting such a social change would be focused on two related strategies. First, it would seek to identify and eliminate those formal policies and practices which directly or indirectly discriminate on the basis of chronological age. Second, it would advance age-oriented, affirmative public programs and propaganda designed to accelerate changes in those attitudes, institutional structures, and private practice which tend to perpetuate age-based inequities.

To be more concrete, we think it is possible to predict some of the specific issue and policy priorities of an aging advocacy based on the concept of age irrelevance. They would include:

- o the elimination of any age-based mandatory retirement;
- o the substantial strengthening of prohibitions against age discrimination in employment practices, and in credit policies;
- o the elimination of age discrimination in professional licensure, certification, and related public regulatory activities;
- o the establishment of affirmative action coverage for older persons in education, training, and employment;
- o the expansion of public and private intergenerational programs, especially in the areas of housing and community action;
- o the expansion of public education and public information activities aimed at eliminating age stereotyping and negative self-images among the old;
- o the conversion of age-triggered tax exemptions and credits to household-income triggered systems;
- o the elimination of purely age-based public privileges, such as reduced recreational fees, or discounts, etc.
- o the dechronologization of retirement income insurance programs, including social security, and removal of welfare or income transfer provisions;
- o the decategorization of age-based income transfer programs such as SSI and their reconstitution on a basis involving some kind of means testing;
- o the decategorization of age-based health insurance programs and their conversion to an actuarial and/or means-tested foundation;
- o the decategorization of age-based social and health support programs (e.g., Title III, Older Americans Act) and their integration into a non-categorical human service system structure;

- o the creation of a non-categorical, integrated, noninstitutional long-term care service system;

- o significant expansion of research into the eradication or amelioration of age-related diseases and impairments; and

- o expansion of the investigative and enforcement powers of the Equal Opportunity Commission vis-a-vis age discrimination issues.

Assuming that the foregoing is a fairly plausible description of the priority programs and objectives that would emerge from a policy commitment to age irrelevance, it is possible to postulate some of the implications for the appropriate location and character of aging advocacy.

At a minimum, this framework would tend to discourage the assignment of major aging advocacy responsibilities to a categorical program agency such as the current Administration on Aging. Indeed, this orientation would appropriately lead to the eventual disestablishment of AoA and the incorporation of its transportation, nutrition, in-home services, legal services, and long-term care programs into non-categorical administrative agencies.

The existing Federal Council on Aging offers a somewhat more relevant model. Advocacy for age irrelevance and ultimately for an age-integrated society, in our judgment, could be effectively advanced by a government-wide commission called something like the National Council on Age Equity. The advisory or advocacy jurisdiction of such a council would encompass all federal legislation as well as administrative and fiscal policy. Its missions would be twofold. First, such a council would be charged with identifying, criticizing, and proposing reform for those laws, regulations, policies, and official practices that directly or indirectly discriminate injuriously on the basis of age. Second, it would seek to initiate affirmative laws and policies aimed at promoting and accelerating societal and attitudinal change toward the goal of age integration, age unconsciousness, and a unitary concept of adulthood. Given the nature and breadth of its mission, the staffing and funding of a National Council on Age Equity would properly emphasize a sociological and policy research capacity as well as a strong civil rights enforcement orientation. Equally important would be a strong public information and public education capability, sufficient to allow the Council to play a leadership role in promoting the image and attitude changes essential for the realization of an age-integrated society.

The concept of age irrelevance has to be taken seriously as a viable social change direction for this country. Although admittedly contrary to many current assumptions in the aging field and, while unquestionably threatening to many of the organizational and professional interests that are now invested in the so-called aging network, the idea of age irrelevance nonetheless does have a growing foundation in social and physiological

research; it does have roots in current and growing streams of the aging movement; and, most importantly, it may lead precisely to those social changes which best conform both to the personal interests of most aging people and to the general public interests.

This seems particularly persuasive when applied to the middle aged and younger old persons. For them, a commitment to age-irrelevant policies may be the best and only way to escape the devaluation, reduced responsibility, limited opportunities, increased economic and social dependence, and societal exclusion that seem to be the inevitable results of at least our current pattern of age differentiation and discrimination. It might alsc be the only direction consistent with the nation's future national interest. Changing birth rates, and a changing national demography measured by altered dependency ratios, may suggest that, if the American standard of living is to be maintained, the nation cannot continue to encourage early retirement, non-participation, or reduced self-sufficiency of an increasing segment of its adult population. We may, in other words, come to recognize that old age was a social and cultural luxury, affordable in the industrially developed countries of the 19th and 20th centuries but not affordable in the very different world of the 21st century.

The validity of the foregoing ultimately turns, of course, on the validity of the age irrelevance hypothesis itself. Is age really so unreliable an indicator of capacity, performance, or circumstance as to be inappropriate or irrelevant to social policy? Many contend chronological age may be as good as any available alternative for policy making. These critics insist that age is an indicator with enough socially relevant correlates to make it a reasonable basis for policy formation.

We sympathize with these objections but believe that a certain caution is essential. It should give critics of age irrelevance pause to reflect that almost every objection they can raise to the understatement of the significance of advanced age to social policy echoes the objections raised against those who first argued that race and gender differences were not barriers to racial and sexual equality.

Up-dating Old Age: A New Definition of the Elderly

If age does in fact correlate with altered capacity and distinctive social circumstances for many older people, then the denial of that fact can only be harmful. It could lead to the removal of protective policies, supportive programs, and economic guarantees that many older people indeed need. Moreover, a commitment to age irrelevance might guarantee the establishment of performance standards and behavioral norms which significant numbers of older people will not want, or be able, to meet. Such a result would only exacerbate the feelings of anxiety, inadequacy, and self-contempt which are already too prevalent among older people. Perhaps most significant, if the basis for age irrelevance

is not socially or physiologically sound, then a wholesale commitment to it will generate inefficient and ultimately futile social policy. Social policy built primarily on a convenient social fiction has serious dangers.

These dangers ought to inspire a thorough analysis of criticism of the premises on which any age irrelevance commitment would ultimately rest. It is our belief that such a reassessment could well lead to a significantly modified conclusion, a conclusion which suggests a different, and in many ways a more conservative, conceptual framework for future aging policy.

Much of what we know today about aging processes and about the condition of America's older population suggests that arguments for age irrelevance are particularly persuasive when applied to older persons between the age of 60 and 75. For these cohorts, there really seem to be too few important age-determined characteristics to necessitate or justify their differentiation from persons between 40 and 60. For persons over 75, however, the case is not yet convincing. For <u>older</u> old people, especially older women, the prevalence of frailty, impairment, incapacities, and bereavement simply appear too strong to be dismissed and too physiologically-related to be meaningfully attributed to ageism or any other amendable historical or cultural causes. Being old, in other words, may be very real and very relevant, especially for those 75 and older.

The inferences for aging policy that can be drawn from the foregoing observations are, we think, plain. The problem with our current conception of <u>the elderly</u> is not that it is an artificial, indefensible categorization, but rather that it is too inclusive. Old age does not, for most, begin at 55, 60 or 65; but perhaps it does at 75.

Upon reflection, the idea that old age as a category for social categorization and social policy has been inappropriately specified is plausible. Social historians agree that the 19th Century selection of age 65 as the index of <u>old age</u> was a convenience without demonstration of its validity as an indicator of age-related characteristics or circumstances. Subsequent reinforcements of the choice of age 65 to mean <u>old</u> (e.g., Social Security) and the identification of earlier ages to mean <u>old</u> (e.g., the Older Americans Act) seemed to have been equally innocent of any deliberate examination of the characteristics or circumstances of older people. Furthermore, whatever accidental relevance to real circumstances these indicators of old age may have had, it has probably been eroded by the dramatic changes that are believed to have occurred in the health and life style of older Americans in the past few decades.

This history teaches lessons: first, that no real effort has been undertaken to identify a physiologically-relevant chronological indicator of old age for public policy purposes; and second, that such an effort ought to be made.

For the sake of illustration, consider the proposal that for purposes of policy formation we should redefine old age as 75 years or older. This would conceptually dissect the current elderly population in two sub-populations. Those under 75 would be affirmed as fully responsible, undifferentiated middle-aged adults; those over 75 would be recognized as possessing special and distinct interests and needs. This would not imply that all persons 75 and older are alike but would imply a useful way to establish eligibility for services.

Policy advocacy in aging would follow this same division. The anti-discrimination, culture-change oriented, opportunity-focused thrust of the age-irrelevant values would be pursued on behalf of persons between 40 and 75. For the elderly (over 75), aging advocacy would seek to assure, as a matter of entitlement, the availability of and access to age-appropriate health, social, recreational, and economic programs--programs designed to ameliorate the hardships and minimize the disabilities inextricably associated with advanced age.

The kind of policy objectives that would flow from an aging advocacy based on this reconceptualization of old age would, in all probability, include:

- o the prohibition of mandatory retirement in the private and public sector prior to age 75;
- o prohibitions against age discrimination in employment, credit and public services, etc. up to age 75;
- o expansion of a range of affirmative action programs targeted at persons 40 to 75 and designed to increase their proportional participation in the mainstream of economic, cultural, social, and political institutions;
- o shift the age eligibility for full, untested eligibility in public retirement and insurance systems to 75;
- o establishment of comprehensive, categorical income maintenance and health service programs for persons over 75;
- o gradual increase to age 75 in eligibility for aging social service programs (e.g., Older Americans Act services);
- o gradual increase to age 75 in eligibility for special tax exemptions and credits as well as other publicly-subsidized privileges (e.g., fee and licensure discounts);

Among its merits is the fact that it accepts many of the themes, orientations, and images present in the current aging movement, but does so in a way that minimizes the inconsistencies and contradictions. In an important sense, this framework resolves the tension between anti-ageism and age protectionism by simply separating them. It advocates an anti-ageist strategy for the younger old, because that best corresponds to the prevalent

personal, social, and economic interests of that age group. It advocates a positive age discrimination on behalf of the older old, because that best meets their characteristic and unavoidable needs.

In formalizing this bifurcation of interests, the altered definition of old age allows directed social change toward a more age-integrated society, without exposing the genuinely frail and vulnerable to the risks and prospects of failure that such a transition might otherwise present.

The proposed redefinition of old age also promises many of the societal and public interest benefits described in connection with age irrelevance. That is, it would tend to encourage a more socially productive use of the talent, experience, and energy of the younger old. By doing so (by in effect reducing dependency ratios), the redefinition of old age might actually permit substantially more public resources to go to meet the income security, social support, and health needs of those over 75 such as

- o expansion of aging service resources targeted to in-home and other long-term care for persons over 75;

- o expansion of supported housing alternatives targeted at persons over 75.

The twofold goal of this kind of social change strategy entails, we believe, a division of advocacy responsibility, as well as of policy objectives. As in the case of the age irrelevance framework, a Council on Aging Equity may be an appropriate and viable approach to eliminating the negative effects of ageism on persons 40 to 75. But under this conceptualization, there remains a clear need for advocacy to create and sustain a system of age-appropriate health, social, and income programs for the newly defined old.

Such a responsibility could be properly assigned to an expanded aging program agency. Although similar to the existing Administration on Aging, the program agency envisioned under this framework would encompass income-maintenance and health insurance entitlements, as well as supportive services like those currently funded under the Older Americans Act. Such an agency might be more aptly called the Administration for Older Adults.

A redefinition of old age as a period that begins at about 75 would require overcoming some deeply-rooted conventions in both public perceptions and public policy. Nevertheless, the practical advantages of this reconceptualization may be worth the time and effort necessary to bring it about. These merits, of course, turn on the validity of a particular age as a relatively reliable indicator of a significant life transition in interests or capacity. Any specified chronological age necessarily contains some arbitrariness, and, accordingly, individual exceptions and social dilemmas will unavoidably abound.

But granted this, the real point is that there are life transitions and certain chronological ages predict them better than others. That a socially and policy relevant change in capacity occurs between childhood and adulthood is indisputable. That age 18 better approximates this transition than age nine or 27 seems equally obvious. Similarly, if there is any meaningful transition from middle to old age, then everything we now know about gerontology suggests that it more frequently occurs between 75 and 80 than it does between 60 and 65.

The Idea of Veteranship: Old Age as a New Status

Public policy on behalf of older people has been and continues to be largely a process of presenting their distinctive needs and of proposing ways of meeting them. This process has bred its own dilemma. By associating old age policies, programs, and benefits with presumptively age-related needs and disadvantages, aging policy has reinforced, some would say invented, an elderly stereotype which is itself a real cause of disability for many older persons. The image of age irrelevance attacks this dilemma by repudiating much of the gerontological foundation of traditional aging policy and advocacy on behalf of older people as a social category. The proposal for redefining old age is less radical. It does not reject the basis for traditional advocacy for special policies for older adults, but instead attempts to make it more precise and less problematic.

There is, we think, a third image of society, a third conceptual framework that thoroughly changes the philosophical and political grounds of traditional aging advocacy without at the same time renouncing its programmatic and policy achievements. It is the idea of veteranship. Such an idea describes older people not as an age category set apart by common needs and interests but as a heterogeneous community of citizens who share in common the fact that each individual has spent most of a human lifetime experiencing, shaping, and being shaped by the same social history as his or her age cohorts. Old age is understood not as a predictor of distinctive circumstance, but as a measure of experience. And it is the quantity of experience, if not the quality, that, under this conceptualization, meaningfully differentiates the old from the young.

Moreover, it is life experience understood in a particular way that emphasizes the contributive, the sacrificial, the self-denying aspects of adulthood. Veteranship, in other words, sees the past histories of older persons largely in terms of working, investing, building, parenting, nurturing, teaching, soldiering, enduring, voting, and policy-making, with a continuing concern for society's survival. Through this perception, old age becomes conceivable as a time of a new and special status, of new opportunities, and of responsibilities for creating a sense of community that will enhance the well-being of humankind.

The notion of veteranship encompasses at least three component goals.

First, it involves some socially subsidized guarantee that individual older people will be afforded a distinctly wide range of choices in the conduct of the last years of their lives. This new status is intended to assure that, through a variety of public policies and programs, older people will experience more rather than fewer options than they did before being denominated old.

Secondly, the new status implies social policies and practices that would lend authority to the opinions, taste, and judgments of older people, especially as these relate to the conduct of their own lives.

Third, this new status implies that public policy and social practice should reinforce and reflect a valuation of the potential, the personality, the body, the imagination, and the needs of individual older people, which is at least equal to that accorded to the young and middle-aged. Such an equitable valuation is a necessary condition for having older people contribute to society, not as a special interest group, but in the many ways in which they are capable and for having them continue as responsible citizens. Because of their experience and historical perspective, veterans have a responsibility as citizens working for and in the public interest.

Consider, for example, the goal of a social guarantee of enhanced choice. Choice applies to every aspect of experience; but certain arenas of choice can be highlighted as immediately relevant to currently important questions of aging policy. One of these is the freedom and opportunity for individually preferred social associations. Put simply, respect involves an assurance to older people of the opportunities for meaningful social association with persons or groups of their own choosing. In public policy terms, this suggests, first, active prohibitions against practices which involuntarily isolate or age-segregate; and, second, affirmative programs designed to assure associational opportunities and options (e.g., friendly visiting, encouragement of family integration, continuing involvement in neighborhood affairs, education for second careers, senior-community centers, intergenerational programs, appropriate residential options, and access to higher educational institutions).

Enhanced choice must extend to life style. Older people ought to have access to a range of options for opinion, activities, dress, sexual expression, family patterns, relationships with young people and children, and personal conduct that corresponds to the real heterogeneity of interests, tastes, and temperament among them. Veteranship implies that old age is not understood as a role but as a status which protects and accommodates a multitude of roles. In terms of public policy, veteranship implies and requires social action not only against formal policies and practices that exclude older adults from particular activities or certain means of personal expression but also against stereotypes and social sanctions which psychologically or culturally confine them to styles and identities which otherwise they would not

choose and for which they and others frequently have a low opinion. Veteranship provides freedom and opportunity to initiate social change and take risks for the common good.

The most critical implications of the goal of enhanced choice--in pending policy significance at least--are those involving work. In our view, veteranship involves conferring upon older persons a real and free choice not to engage in economically conventional work; that is, to retire or to exercise a free choice in their use of time and energy and gainful employment, community service, and work in the public interest. The emphasis here, however, is not on retirement, per se, but on the actuality of choice and continuing social involvement. This means two things. First, it requires publicly insured programs that afford older persons enough income security, including secure pensions, protected from inflation, to make retirement from wage-earning a practical and non-punitive option. In current policy language, it means a genuinely adequate social security system available to all older people. Just as important, however, is a recognition that if retirement is to be a genuine choice available to older people, then the option not to retire or to work must be equally assured. At a minimum, this suggests an end to mandatory, age-based retirement; a prohibition against age-discrimination in employment training, hiring, and on-the-job practices; and finally, affirmative programs for those older persons, such as homemakers, who are especially vulnerable to employment discrimination and exclusion.

In addition to distinctly enhanced choices, veteranship and the related goal of respect for age also involve the acknowledgement of special authority in the judgment and decisions of older people. In a sense, this acknowledgement is simply a recognition that living long correlates with the accumulation of experience and a sense of history and that old age is, in fact, an achievement that merits respect. What it suggests, in practical terms, are policies and procedures that vigorously affirm and protect older persons' self-determination--policies, that, for example, honor older persons' rights to assume responsibility for themselves, to be permitted to accept risks they are prepared to take, to be presumed competent, and to conduct their lives in accordance with their own psychological and material interests rather than in deference to those of relatives, the government, or anyone else.

The recognition of special authority of the views of older persons also suggests social practices and, where appropriate, public policies that encourage and affirm their potential as leaders, counselors, models, teachers, and social critics. Opportunities for the fulfillment of these roles ought to be structured into socially-reinforced family models; into contacts and interaction with people of all ages; into community, church, and voluntary organization structures; into educational institutions; and into bodies that conduct public business. Put another way, one of the social goals inherent in veteranship is

the development of a contemporary and culturally relevant analogue to the idea of elders, older adults who are concerned about and responsible for the peaceful survival and well-being of the society.

Perhaps even more basic than enhanced choice and deference to experience is the goal, implied in veteranship, of extending equitable moral valuation to the lives of older people. In negative terms, our social objective is a systematic eradication of the cultural assumptions, social practices, and public policies that manifestly devalue the importance of physical health in older people; the potential and right of the aged to learn, to grow, and to change; the significance of their aspirations; the quality of their physical and mental experience; and, in short, the meaning of their present lives and experience. This goal really envisions nothing more complicated than a society which imparts as much concern to the person and potential of an 80 year old as it does to that of an eighteen year old. Yet, despite its simplicity, such a goal provides an ethical and political criterion for a constructive review of not only our current public policies but also our private attitudes.

In summary, we believe this point of view has the following policy implications:

Policies that Guarantee Freedom to Work or Retire

- o a neutral policy on retirement at age 65 with universal, guaranteed income for all older persons, including benefits indexed to the cost of living or to wages; elimination of the earnings test in social security; and equitable taxation of income.

- o prohibition of mandatory retirement;

- o elimination of age discrimination in training, recruitment, hiring, and employment practices; and

- o affirmative action programs to guarantee older people access to training, education, and other skill development programs.

- o promotion of flexible work patterns including sabbatical leaves, job sharing, part-time work, and work teams.

Programs and Policies that Assure Freedom of Associational Opportunities

- o promotion of family models that envision multigenerational living, including tax and service policies that encourage children to assist parents and compensate parents for contributions to family income or well-being;

o broadening the definition of family to include two or more persons who share resources, values, goals, and lifestyles over time in a network of responsibility and decision-making that transcend blood, legal ties, adoption, and marriage;

o public housing policy that promotes decentralization of age-specific housing and that increases the availability of age-integrated housing;

o development of community recreational programs aimed at a balance between age-appropriate and age-integrated activities;

o media and public education policies aimed at promoting attitudinal acceptance for intergenerational associations;

o policies and programs that utilize senior centers and senior housing as focal points and delivery mechanisms for intergenerational social and civic activities, such as senior centers as child day care and as community meeting place;

o promote alternatives to age-segregated nutritional and service programs in the interest of promoting age integration;

o encouragement of existing and new intergenerational programs such as Foster Grandparent, Juvenile Restitution, and the Youth and Age Corps that encourage contact between older and younger persons; and

o reform of long-term care delivery systems to avoid unnecessary age segregation and exclusion.

Promotion of Positive Veteranship:

Roles that Enhance Respect

o promote programs that utilize occupational skills and experience of elders in apprenticeship training; homemaking classes; community home economics programs; community conservation and revitalization programs; and protection of our environment from pollution, chemical waste and nuclear hazzards;

o promote programs that utilize life experience skills of older persons, such as using elders as staff in informal community arbitration and as informal family, mental health, and career counselors; as community teachers who take their skills to various locations in the community; as monitors of public bodies;

o promote senior centers and senior organizations as vehicles for social improvement through social research, public policy development, and public program evaluation; and for critiquing national and local budgeting and priorities in expenditures;

o expand recruitment of elders for membership on public advisory and policy boards;

o declare age 65 as the age of entitlement to the status of veteranship; and

o propose a 1991 White House Conference of Elders to review the State of the Nation.

Enhancement of Elder Self-Determination

o redesign the delivery of long-term care, stressing a system of service delivery adapted to older persons rather than requiring older persons to adapt to the service system;

o renew emphasis on rights of choice and recognition of the prima facie competence of older people in determining control of their assets, their person, and in the acceptance or refusal of medical and other services; and

o involve older adults actively in the formation of policies and programs that affect their lives directly and indirectly.

Enhancement of the Authority of Veteranship

o social commitment to policies and programs that both protect the disabled and encourage the use of older persons as a social resource;

o develop professional education that insures an accurate perception of the potential of older adults, focuses on health rather than illness, and is optimistic about the effectiveness of skillful prevention, therapy, and rehabilitation;

o develop a care system that is equitable in its valuation of the needs of older adults and in response to those needs;

o reorient service systems to issues of primary importance to all people, particularly older adults, including services that enhance preventive maintenance and, as necessary, primary and long-term care with emphasis on providing care in the community;

o create a National Council on Age Equity to stimulate and review public policy for persons of all ages, with attention to the particular problems of special populations such as women, minorities and persons living in rural areas; this National Council would develop strategies for linking the generations in programs designed to enhance the public interest;

o promote public information and education that recognizes the rights to privacy and freedom of sexual expression among older adults; and

o interpret veteranship as a new status entitlement that implies responsibilities as well as rights. These responsibilities include the obligation of older adults to consider the continuing need of society for their experience. The fulfillment of the responsibilities of veteranship requires access to the opportunities for continued involvement of elders in their own behalf and in behalf of society and its peaceful continuance.

IV. A RECOMMENDATION

There is a moral and aesthetic persuasiveness about this conception of aging as a continuum from birth to death. It seems accurate. It seems just. It seems to give to old age a positive meaning and place. And for all these reasons, it seems to provide a proper, indeed righteous, basis for a broad-based aging advocacy aimed at policies and programs that respond to the heterogeneity of interests, skills, needs, and wants that reside in our aged population. It may even reconcile and legitimize the aging movement's current commitment to a plethora of disparate and seemingly inconsistent objectives. For these reasons we find veteranship an attractive image of a future society to be pursued.

Ought we not, then, develop and assert the concept of veteranship as the most promising framework for future aging policy? Some serious questions may inhibit an unqualified affirmative response.

The most basic of these questions is whether veteranship contains enough concrete political and social meaning to offer a practical point of view for aging policy. It tells us, for example, that older age ought to be seen not as a role but a status. Yet, can it help determine the practical policy of when that status is achieved? At what age it is to be accorded? The answer varies because the life expectancy and social situation of different groups of older people in our society vary. Similarly, veteranship tells us that aging services, benefits, and policies are earned compensations. However, since compensations are under this view equally earned, are we to conclude that all programs designed to be compensatory are equally justified? Can conferring a new status for elders really be equated with the meeting of basic life needs in a way that generates effective policy? We believe so and have illustrated this belief above.

We are sure many will conclude that the concept of veteranship calling for national policies enhancing respect for elders is little more than sentimental faith. It is, to be sure, a faith; but it is in no sense sentimental. On the contrary, we affirm that veteranship is not only a solidly pragmatic prescription for social policy toward old age but is also the only conceptual framework which genuinely reflects the ultimate interests of both the old and the young in our society.

For one thing, the idea of defining old age as an achievement, honored by the granting of prerogatives, entitlements, and authority, contains within it the possibility for a needed reconceptualization of the life cycle itself. By enhancing the opportunities and valuation of one's later years, veteranship encourages the probability of experiencing aging as a process, not of diminution and decline, but of positive progress, liberation, outreach and concern for generations to come, and fruition. Such an affirmation is neither naive nor impractical. Indeed, what is truly naive is our current preoccupation with and overvaluation of youth and a rejection of the positive attributes of elders; for sooner or later this narrow view of the life cycle turns upon even its most enthusiastic proponents with a self-fulfilling prophecy of destructive self-contempt. The mental illness and social anxiety which seems to increasingly characterize contemporary adult life may be the best indices of the enormous human price we pay for the naivete of our failure to positively affirm old age.

But what about the hard issue of social and economic costs of veteranship? Some will argue that veteranship is a prescription for costly services designed to benefit only a portion of our population at a cost unaffordable to the remainder. Such an objection is wrong-headed on two counts. First, older people are our future selves. If they are a special interest group, then they are one to which everyone belongs or is seeking membership. Veteranship does not, therefore, really propose an expenditure of resources for some; rather, it entails an investment in the quality of everyone's life, an investment that promises to pay dividends at every stage of life.

Veteranship is also cost-efficient in an immediate and quantitative sense. In its emphasis on choice, opportunity, and self-determination, the concept not only fully recognizes the heterogeneity of interest, motivation, ability, temperament, talent, circumstance, and taste among the old; it also liberates productively the energy, creativity, and experience that this rich variety of elders contains. Yet, unlike some proposals that recommend age irrelevance, veteranship's affirmation of choice and earned entitlement allows a liberation of productivity without at the same time stigmatizing or humiliating those older persons who, for reason of disability or disinclination, are less active contributors to society.

Finally, we speculate that, among those who will acknowledge the practical social value of conferring a new status upon the old, there will be some who insist that such privilege is in no real, meaningful, or objective sense, earned. They will perceive veteranship and its inherent equating of age with achievement as, at best, a convenient but insubstantial rationale. This seemingly tough-minded qualification strikes us as unacceptable. The objection assumes that living does not really teach; that enduring does not really involve courage, contribution, and sacrifice; and that human survival is somehow a passive and automatic process. The innocence of such assumptions can be excused only for the very young.

The Committee, with full awareness of the dilemmas posed by any image of the future society we prefer, concludes that veteranship is a useful perspective from which to develop public policy in the decade ahead.

APPENDIX I

On Age Discrimination Legislation: The 1975 Age Discrimination Act

This Committee has given serious consideration to the significance of age discrimination legislation, as well as to its impact. To aid in its consideration, the Committee had a study prepared by Professor Howard Eglit entitled "The Age Discrimination Act's Implications for an Age-Integrated Society." It has also reviewed an article in the Yale Law Journal by Peter Schuck, entitled "The Graying of Civil Rights Law: The Age Discrimination Act of 1975."

The passage of the Act by Congress, apparently with minimal consideration of the necessity or consequences of such legislation, demonstrates emphatically the extent to which the United States opposes age discrimination and the extent to which that fact is politically recognized. In and of itself, this action of Congress was step toward an ageintegrated society, in spite of the ineffecti eness of the Act as explained in the papers mentioned above.

It is not for this Committee to recommend whether the Act should be supplanted, modified, or left alone. However, the attached paper may be useful to others who consider these questions.

THE AGE DISCRIMINATION ACT'S IMPLICATIONS FOR AN AGE-INTEGRATED SOCIETY

by

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A Paper Prepared for
The White House Conference on Aging
Technical Committee on Creating an
Age-Integrated Society--Implications
for Societal Institutions

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I. INTRODUCTION

The Age Discrimination Act[1] bans discrimination on the basis of age by any recipient of federal financial assistance. The statute's genesis, and its content, have particular significance for assessing the realization---now or in the future--of an age-integrated society, for this statute is the first federal essay at addressing ageism on a broad scale. Previous efforts at dealing with age discrimination had focused on particularized aspects of the problem, such as in the fields of employment[2] and credit.[3] The ADA reaches far beyond these comparatively narrow concerns, applying to the 100,000 direct recipients and 450,000 indirect recipients of federal assistance,[4] which totals in excess of $100,000,000,000 annually.[5]

Enacted in 1975, the ADA only went into actual effect as of July 1, 1979. Unfortunately, the long wait for its implementation was not worth the candle; the Act is fatally flawed, gutted by exceptions which deprive it of virtually any substantial legal effectiveness. Whether, given its weaknesses, it can serve any more substantially as a symbolic lever for focusing attention on, and mitigating, ageism is problematic.

In part the Act's failings--and this is in some measure a speculative assertion--are the product of well-intentional ignorance, both on the part of the statute's drafters and of the authors of the implementing government-wide regulation, promulgated by the then-Department of Health, Education and Welfare.[6] In part, no doubt, the Act represents an undiscriminating reaction to the increasing political power of an attractive political grouping, e.g., the elderly. And in part the statute represents an awkward compromise between ideals, on the one hand, and pragmatism on the other, with the Congress unsuccessfully groping to accommodate the goal of nondiscrimination to the difficult realities of defining discrimination, in the first instance, and of capturing in suitable language realistic proscription of that vice as the second, correlative step.

These opening observations are of course heavily larded with rhetoric. They deserve--and in the context of this paper, demand--substantiation. While the purpose of this essay is not to delve inordinately into arcane legalisms, an understanding of the Act and its significance as both a reflection of existing social perceptions and as a spearhead in furthering changed attitudes is enhanced by some analysis of the role of age in the law generally, and the treatment of age distinctions under the Constitution and the Age Discrimination Act specifically.

II. THE ROLE OF AGE DISTINCTIONS GENERALLY

It should come as no surprise to the readers of this paper that age lines are commonly used as determinants of rights and obligations, and for the allocation and distribution of economic and other resources in our society. Indeed, upon reflection, it becomes apparent that age is likely the single most common criterion utilized in our laws and policies for making such determinations.

Voting rights turn on the age of the individual.[7] The Constitution and numerous state laws[8] condition candidacy for public office on the attainment of some minimum age, such as age 30 for United States Senator.[9] Other statutes require or allow the forced retirement of public employees[10] and sometimes even of elected officials--most commonly judges--at some prescribed age.[11] Contract law distinguishes between binding and voidable agreements in terms of the age of the signatories of the documents. State laws bar the hiring of new police officers and firemen aged 35 and over,[12] and major transportation companies in the private sector impose a like standard for bus drivers.[13] Publicly support schools exclude those too young--the 3-year-old whose parents desire to enroll her in kindergarten,[14] and those too old--e.g., the over-30 medical school applicant.[15] Medical programs funded by the federal government are keyed to certain age groups;[16] the Social Security Act relies upon age lines to determine eligibility for benefits,[17] curfew laws keep children off the streets at night;[18] and criminal laws differentiate penalties, and even the crime themselves, on the basis of the ages of the perpetrators.[19]

Age distinctions creep into our social ordering even when they are not overtly mandated by statute. Hospital emergency rooms services are denied the aged in favor of younger patients in circumstances when medical personnel and supplies are scarce.[20] Public mass transit systems buy buses whose steps are too high for many of the elderly to mount, and they operate subway systems whose stairs make them equally inaccessible.[21] Zoning laws exclude multi-family dwelling units, while only allowing single family homes which are typically unattractive to older couples whose children have gone. Federally financed legal services programs, ostensibly designed to serve all the poor, underrepresent the elderly.[22]

Obviously, this paper's audience are not among the uninitiated. Thus, one need not dwell longer upon the issue. The given is that age distinctions are common; the problem is devising a formula which separates out those age distinctions which can be tolerated--assuming some can--from those which should be condemned.

One could take the position that ours should be an age-blind society.[23] Presumably, the premise underlying that stance is

that indeed no use of age distinctions is appropriate. As expression of an ideal, that view may be commended. As a realistic possibility, it raises particular difficulties. A minor one is the matter of symmetry--even in the area of race discrimination, the Supreme Court has never been willing to say that all uses of racial distinctions are unacceptable. Given a strong enough justification, such distinctions will be allowed. Inasmuch as there is certainly far more of a societal consensus for banning racism, and there are certainly stronger social and historical imperatives for doing so, than there are as to ageism, it would be anomalous to impose a more rigorous stricture for age than has been done for race.

More pragmatically, there is a legitimate interest, both on the part of government and in the private sector, in being able to 'do business' expeditiously and efficiently. The use of age lines facilitates these ends. Age generally is a characteristic which is subject to little dispute--a person is either 50 or she is not. As a result, an agency which keys its program or a business which sets its policies by utilizing age lines can make determinations as to any given individual with ease. Thereby, the possibility of delay in decision making is averted, with benefits both to the agency and to its clients. More importantly, a system which uses criteria--such as age--which leave little room for discretion is a system which mitigates the chances for mistake and even intentional abuse. Given the not inappropriate mistrust which many citizens have as to any bureaucratic institution which imposes upon them undesired burdens, or deprives them of desired rights or benefits, it is beneficial to have built into that institutional setting criteria which diminish the possibility for discretionary injustice.[24]

There is the other side of the coin, of course. Undiscriminating reliance upon age as the determinative criterion for decision making will lead to inequities. While generalizations typically are in some measure accurate, inevitably some individuals who have the characteristic which triggers the generalization--e.g., age 65, let us say--will not in fact fit the generalization itself, e.g., that all 65-year-olds are incapable of performing the job adequately. This is a consequence which runs afoul of a basic proposition in our society: "legal burdens [as well as burdens imposed informally by social attitudes, rather than formally by laws] should bear some relationship to individual responsibility or wrongdoing."[25] More than that, not only will specific individuals improperly treated suffer; likely, larger social costs will follow as well. Generalized feelings of unfairness may grow out of individual cases of inequity; these in turn can fester and grow to produce disruptive social dissatisfaction. Moreover, by individuals being treated as group members, rather than on their own merits, we suffer the loss of the services and productivity of those who would have been bettered by admission to a given training program, or who would have continued working had they only had the choice.

Assuming that for now the achievement, and even pursuit, of an age-blind society are problematic matters, the next inquiry turns to examining how age is indeed treated under the Constitution and the Age Discrimination Act in those situations where a claim is made that, at least in a given context, such distinctions constitute intolerable discrimination.

III. TREATMENT OF AGE DISCRIMINATION UNDER THE CONSTITUTION

It is the Fourteenth Amendment of the United States Constitution which is the repository of those provisions most commonly applied when speaking to civil rights. The Due Process Clause protects against deprivation of life, liberty and property without due process of law--e.g., without fairness. The Equal Protection Clause assures that persons who are similarly situated shall be similarly treated. Two emendations to this cursory synopsis of constitutional doctrine are appropriate. First, while the Fourteenth Amendment only applies to state and local governments, the Fifth Amendment, which is applicable to actions by the federal government, itself contains a due process clause. Moreover, the Supreme Court has interpreted it as in effect embodying an equal protection guarantee akin to that openly embodied in the Fourteenth Amendment.[26] More important as a substantive matter is the further fact that the Fourteenth Amendment, and the Fifth Amendment as well, only apply to governmental acts. If a city government refuses to hire Blacks, a claim may be made under the Equal Protection Clause; if a private employer pursues the same policy, no constitutional violation can be argued. In further amplification, it should be noted that the case law establishes that the mere receipt of federal moneys by a private entity does not convert that private entity into a governmental agent, thereby making it, because of its funding, susceptible to liability under the Constitution.[27]

One might conclude--and obviously there is a considerable amount of doctrinal exposition which is being omitted here--that the use of an age distinction by a governmental body--let us say a mandatory retirement provision applicable to state employees, or a minimum age requirement for enrollment in public school--could run afoul of either the Due Process Clause or the Equal Protection Clause. Certainly respectable arguments can be mounted that inflexible generalizations work unfairness and inequality on the individuals who fall on the wrong side of the age lines. Whatever the logical or moral probity of such observations, however, they are legally unconvincing ones.

The Supreme Court has held, in the mandatory retirement context, that age distinctions are to be considered under the mere reasonableness test,[28] and there is no reason to question that this treatment extends generally to the use of age distinctions in any setting involving adults.[29] While the layperson might assume

that a test of reasonableness is not an altogether insignificant one, the fact is that as a legal standard it is one which is virtually outcome predictive. There is no law which has ever been examined by the Supreme Court under this standard which has not been upheld--with one exception. And even that one aberrational decision was subsequently overruled by the Court.[30] For a law to be rational, it need not be wise, or good, or the best possible, or the least burdensome alternative among a choice of several approaches. It is sufficient simply that a rational basis for the law could conceivably be imagined. Thus, as the Supreme Court, in its most recent venture into the age area, said in Vance v. Bradley,[31] a mandatory retirement case:

> ...[T]hose challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker....
>
> > "It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety."

Admittedly, there may be some outlandish situation in which an age-based distinction could be established as after all being absolutely irrational. In a passing observation more than 80 years ago, for example, the Supreme Court opined:

> The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected,....[32]

Such totally arbitrary deployment of age distinctions is most unlikely to occur. Typically, however ill-advised or unfair use of an age line may be, there will be some conceivably rational basis for the decisionmaker's reliance upon this criterion, and that will suffice under the Constitution. Thus, the Supreme Court in an earlier mandatory retirement ruling was willing to uphold the challenged statute, even while noting that the law was not really a very good one:

> That the State chooses not to determine fitness more precisely through individualized testing after age 50 is not to say the the objective of assuring physical fitness is not rationally furthered by a maximum-age limitation. It is only to say that with regard to the interest of all concerned, the State has perhaps not chosen the best means to accomplish this purpose. But where rationality is the test, a State "does because the classifications made by its laws are imperfect."[33]

One might analyze why the courts have been so unsympathetic to constitutional claims attacking ageism. This paper is not the appropriate vehicle for that exploration, however. Rather, its focus is the Age Discrimination Act.

IV. THE AGE DISCRIMINATION ACT

The constitutional decisions just discussed impose no barrier to Congress adopting a rigor which the courts themselves have abjured: all that Vance established was that the Constitution does not require strict scrutiny of age distinctions. The Court did not preclude the federal legislature from adopting such a posture. The Age Discrimination Act, then, could introduce a rigor into the examination of age lines--at least in the case of recipients of federal financial assistance--not otherwise to be had. That rigor would justify the Act's existence. Moreover, the Act could have further utility, inasmuch as it reaches to private entities, whereas the Fourteenth Amendment does not.

The Act purports to ban discrimination on the basis of age by any recipient of federal financial assistance. The ultimate penalty for transgression is loss of federal funding. Both the Act's history and its structure reveal it as standing in a line of similar enactments, beginning with Title VI of the Civil Rights Act of 1964[34], and extending on through Title IX of the Education Amendments of 1972[35], and Section 504 of the Rehabilitation Act of 1973.[36] What distinguishes the ADA from these predecessor statutes, which addresses discrimination by recipients of federal financial assistance on the basis, respectively, of race, sex, and handicap, is the fact that the age statute is brigaded with a number of corrosive exceptions. Each of these alone cuts deeply into the statute's ostensible condemnation of ageism; together, they destroy it. In effect, then, the ADA is a schizophrenic law, purporting to outlaw on the one hand what it then proceeds to allow--through its exceptions--on the other.

If laws reflect societal perceptions--and often they do, then presumably the hearings which preceded adoption of the ADA, and the debates which accompanied its consideration, should be useful source materials disclosing most directly those preceptions which the more formalistic statutory language may not so overtly reveal. In fact, the hearings and debates on the ADA are strikingly sparse, and this in itself is revelatory.

The Act was generated by a passing comment made by then-Commissioner of Aging Arthur Flemming, while testifying before a House subcommittee considering amendments to the Older Americans Act. He observed that ageism was a vice to be equated with racism and sexism.[37] With alacrity the legislators thereupon drafted another amendment to the Older Americans Act--the ADA--in language very similar to that now on the statute books.

There was no evidence adduced whatsoever during the hearings in the House to justify the perception that age discrimination by recipients of federal financial assistance even existed, let alone that it was a problem needful of statutory attention. And the debates on the Act in the House were equally unenlightened. Only one Representative even ventured to offer anything beyond rhetoric about the evils of age discrimination; he cited some figures to the effect that older persons were disproportionately underserved by federally funded job training programs.[38] The implication was that this situation was due to discrimination; no consideration was given to other possible explanations for this disproportionality.

The Senate proceeded more cautiously. The Senate Committee considering the amendments to the Older Americans Act had been put on notice by then-Secretary of Health, Education and Welfare Caspar Weinberger that the Administration had considerable problems with the House-passed bill,[39] and so it opted simply for a study to be done by the U.S. Commission on Civil Rights to determine whether indeed there was a problem. The full Senate concurred in this tentative venture into the discrimination waters.

The Senate and House conferees, convened to work out the differences between the bills passed by the two Houses, were thus confronted with two totally dissimilar approaches. They finessed this disparity by working out an awkward alliance: the ADA would be adopted, but it would not go into effect until the Commission undertook and completed its study.[40] There was of course something passing strange here. If age discrimination indeed were a perceived, tangible vice, then no study should have been necessary to determine its very existence. Contrarily, if indeed there was sufficient warrant for doubting the existence and extent of ageism perpetrated by recipients of federal moneys, then adoption of a statute based on the premise that there was an evil out there which called for action was certainly premature. In part, this strange melange was devised as a means to break the impasse in the conference committee, which had looming over it the pressure of producing an acceptable bill containing the numerous other amendments to the Older Americans Act.[41] But expedience at best can only explain the result; it cannot justify the inherent conflict in the originally enacted ADA.

Thus, the genesis of the ADA reveals that it was a response to an evil which everyone could readily deplore, which no one had yet documented, and which some perhaps doubted even existed. The text of the law reveals even more the deep ambivalence which prevades the Act. There are two primary foci of attention in this regard--the standard of reasonableness employed in the Act, and the reach of the exceptions embodied in the statute.

1. The Reasonableness Standard

As the House passed its version of the Act, the statute's statement of purpose announced that the law was designed to bar

discrimination on the basis of age.[42] In the statute's exceptions, however, the House relied upon a caveat absent in the statement of purpose itself: there, a reasonableness test was injected into the scheme. Thus, the statute provided that it would not be a violation of the Act for an age distinction to be used if, in the program or activity involved, "such action reasonable takes into account age as a factor necessary to the normal operation of...[the] program or activity;...".[43] An additional exception sanitized actions otherwise violative of the statute if "the differentiation made by such action[s] is based upon reasonable factors other than age."[44] Given the foregoing discussion regarding the legal significance of a reasonableness standard, the reader should readily see that its injection into the statute seriously compromised the ostensible rigor of the law's purported proscription.

Then-Secretary of Health, Education and Welfare Weinberger wrote in 1975 to the Senate Committee, which had at the time he wrote not yet taken up consideration of amendments to the Older Americans Act (including the House-passed ADA), and he vociferously voiced concern about the ambiguities inherent in the reasonableness test.[45] Assuming that such a standard indeed imported some level of scrutiny of program activities beyond the pure deference seen in the constitutionally-based case law, that standard, he complained, provided virtually no guidance as to what indeed would fall within an exception. In part, this concern, subsequently also voiced by Senator Eagleton, manager of the conference bill,[46] explains the Senate's having opted initially simply for a study of the problem of age discrimination by recipients of federal financial assistance.

Ironically, given Secretary Weinberger's clearly voiced alarm, the Senate-House conferees actually compounded the difficulty by amending the statement of purpose of the Act so as to provide that the ADA only banned "unreasonable" discrimination by funding recipients.[47] Thus, the statute was further infiltrated with ambigity, rather than relieved of it. This ambiguity was not the product of simple ignorance; the conferees were remarkably candid in admitting that they themselves really did not know what they were doing:

> The difficulty, obviously, lies in establishing what age-related distinctions are "reasonable" with respect to each federally-assisted program or activity, and on this there is not a clear consensus among the conferees. There are basic differences on the extent to which age may validly be taken into account by program administrators in determining who is eligible to participate in programs in the absence of statutorily-established criteria regarding age.[48]

The answer, if one existed, was to follow from the Civil Rights Commission's study.

This was a classic example, then, of legislators defaulting on their responsibility to define what they were legislating. But even as to this evasion of its own responsibilities, the Congress aggravated the problem of ambiguity by not adequately defining the Commission's mandate:

> In conclusion, the conferees wish to stress the importance of the study of age discrimination... Where there is found evidence that participation in such programs is affected by distinctions based on age, then the Commission ought to consider the reasonableness of such distinctions and, where appropriate, review the social, economic, legal, and administrative effects of alternative responses to the question of what is reasonable in each case. A thorough, objective, and thoughtful study of this subject is essential to a final resolution by the Congress of the difficult policy issues that are left undecided by this legislation.[49]

The critical missing element, of course, was any guidance for the Commission as to what standard it should use to determine whether a given age distinction was reasonable.[50]

Ultimately, in 1978, the Act was amended to delete the word "unreasonable" from the statement of purpose.[51] But the reasonableness standard remained in the substantively significant provisions--the exceptions.

How to comprehend this legislative belly-flop? There is an underlying explanation, after all--one which the Conference Report itself revealed: ageism was simly not perceived as being as invidious as racism and sexism, notwithstanding Commissioner Flemming's assertion to the contrary at the time of the Act's creation:

> ...Distinguishing among individuals on the basis of race for purposes of determining their eligibility to receive the benefits of, or participate in, federally assisted programs is per se unfair treatment and violative of the Constitution; in this context, race is an arbitrary distinction. But age may often be a reasonable distinction for these purposes,...[52]

Clearly, Congress did not envision achievement of an age-blind society. Indeed, as revealed by the statute's use of the weak reasonableness standard, it did not even envision a society where age could only be relied upon following rigorous justification.

The task at hand still was to separate out 'bad' uses of age distinctions from 'good' ones. As the Act was originally adopted, the cutting edge, as set forth by the statement of

purpose, would be the line separating "unreasonable" discrimination from "reasonable" age distinctions. That which was reasonable included that which fell within one of the exceptions carved out by the statute. Even since 1978, when the word "unreasonable" was dropped from the statement of purpose, the exceptions still stand as the mechanism for delineating the forbidden from the acceptable.

2. The Statutory and Regulatory Exceptions

There are three major statutory exceptions embodied in the ADA, and a fourth is added by the government-wide regulations implementing the statute which were issued by the then-Department of Health, Education and Welfare pursuant to the Act's mandate.

The first exception provides that it is not a violation of the statute to take an action otherwise prohibited "if, in the program or activity involved--...such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity;...".[53] This language is, to say the least, obscure. It is unclear, for example, what the "normal operation" of a program is.[54] It is likewise unclear as to whether age must be shown as being "necessary" to the program, or whether it is simply sufficient that the program administrator reasonably believed that age was necessary. This latter possibility of course largely voids the exception of any rigor insofar as barring discrimination is concerned, given the weakness of the reasonableness limitation. Actually, this likely is the proper reading of the statutory language, even given a four-part test set forth in the HEW government-wide regulations which appears to flesh out the provisions,[55] for this test actually goes to the question of determining the necessity of an age distinction and leaves largely unaddressed the issue of the reasonableness prong of the exception.

The second caveat likewise incorporates the reasonableness standard, providing that the Act will not be transgressed by use of "reasonable factors other than age,"[56] even if the consequence of reliance upon such factor is a disproportionate impact in terms of age.[57] For example, suppose a program aimed at providing computer training imposes a requirement that participants must have high school diplomas. On its face, this criterion for admission appears to be a neutral one--in other words, it is a reasonable factor other than age. In fact, the requirement impacts adversely upon those under 18, who have not yet finished their schooling, and upon those over 60, inasmuch as this latter group has a lesser number of high school graduates, as a proportion of the total group, than does the population at large.

The HEW regulations interpreting this exception are confusing. This may be due to the same type of ambivalence as is seen in the history of the statute itself; it may be that the regulations are

simply the product of the drafters' ignorance about the actual litigation of cases in court. On the one hand, the regulations beef up the reasonable-factors-other-than-age exception by requiring that it must be shown that the factor employed--e.g., the diploma requirement, bears "a direct and substantial relationship to the normal operation of the program or activity or the achievement of a statutory objective"[58]--a standard tougher than mere rationality. In explanation, the commentary accompanying the regulations admits that were the statutory language to be literally followed, by simply using the test of reasonableness, the Act's effectiveness would be devastatingly eroded:

> To use a rational relationship or minimal scrutiny standard would leave open the possibility of purposefully circumventing the ADA by allowing administrators to use factors other than age to operate a program when an explicit use of age would be prohibited. HEW also believes that a minimal scrutiny standard would permit activities that should be prohibited. The use of that standard would make it very difficult to establish that an activity is in violation of the ADA...[59]

The agency's commentary is of course accurate. Whether the agency has the authority to rectify the weakness of the statute by supplanting for the reasonableness standard a "direct and substantial relationship" test is, as a legal matter, quite dubious, however.

Where the agency undercuts its own rigor in terms of dealing with this particular exception is in the additional commentary which holds that "proportional program participation by age or the proportional allocation of funds by age" is not required.[60] For a lawyer having to deal with the statute on behalf of an aggrieved client, this assertion is very troubling. In other areas of civil rights law--most notably, under Title VII of the Civil Rights Act of 1964[61] which bans discrimination in employment on the basis of race, color, sex, national origin, and religion--a plaintiff can establish what is called a prima facie case by simply showing disparate impact.[62] In other words, while showing that an ostensibly neutral policy produces a disproportionate impact upon a given protected group under the statute, such as women, is not enough to win the case, it is enough to enable the plaintiff to get into court and to put upon the defendant the task of articulating a non-discriminatory justification for the challenged policy. In contrast, the HEW assertion would have it that a showing of disproportionate participation or disproportionate allocation of resources is not enough to establish the prima facie case. In other words, it would not suffice for an aggrieved 65-year-old to point to our computer training program's diploma policy and to show that that policy, as a statistical matter, has the consequence of excluding persons over 60. The problem is that with an ostensibly neutral policy, the primary means of establishing a case is exactly by doing what the ADA commentary bans--the eliciting of statistics

demonstrating the disproportionate impact of the policy. Indeed, it is difficult to envision how else an ADA plaintiff could succeed in challenging such a policy other than by such a showing.

The final statutory exception sanitizes of taint any program or activity "established under authority of any law."[63] The HEW regulation interprets this proviso to encompass any federal, state or local law or ordinance enacted by an elected, general purpose body.[64] This reading of course vastly expands the cryptic statutory language, but in actuality HEW cannot be faulted. For the legislative history, consisting of an abortive attempt in 1978 to amend the statute so as to limit the "any law" exception just to Federal laws, really left the agency with little choice. The upshot is that any age distinction employed by a recipient of federal funding can be justified if the program can point to an authorizing statute, at any level of government, which sets forth the distinction. If no such statute presently exists, the ADA exception is an invitation to general purpose, elected legislatures to enact age-based distinctions, since they are thereby secure from liability the federally funded programs conducted in pursuit of those laws.

None of these exceptions is explained in the legislative history of the ADA, a rather unique circumstance in itself, given the breadth of these provisions. What seems clearly appropriate as a conclusion is that the Congress in fact really feared upsetting the status quo. It did not want to put any burden upon funded programs by causing them to revise their overtly ageist practices; rather, they can continue on so long as the age distinctions they use reasonably take into account age as a factor necessary to their normal operation. Similarly, even if programs do not openly use age distinctions, but rather utilize ostensibly neutral factors which impact adversely upon given age groups, these programs too should not be troubled--the reasonable-factors-other-than-age exception will protect them. And the "any law" exception further assures that whatever is going on out there in the country by way of ageist policies, as reflected in federal, and state, and local, laws, these policies too are not in jeopardy.

A further conclusion may well be warranted--Congress really did not know what the state of the matter was, and it did not really care to find out. It was sufficient that the rhetoric of opposition to discrimination could be uttered; actual dealing with the issue would be avoided through ignorance. Rather than surveying state laws for example, to see whether their uses of age distinctions were justifiable (under some standard), the easier route would simply be to leave those laws inviolate.

Finally, HEW itself imposed still another exception upon this hapless statute--one which in effect was prompted by the apparent agency perception that Congress really could not have been as stupid (or determined) as it appeared to be, and thus the agency would save Congress from itself. This venture arose out of the

possible jeopardizing by the Act, weak as it is, of at least some benefits programs, such as reduced fares for students and "senior citizens" on public mass transit systems. Inasmuch as "the Congress has consistently made clear its support for the concerns of older persons...," the agency reasoned, "[i]t is...unlikely that Congress intended the Act to call into question the generally accepted special benefits which are provided to older persons...".[65] Likewise, "no one has suggested that similar benefits for children should be questioned under the Act."[66] Thus, HEW promulgated a regulation saving these programs, with language which contorts reality to serve the end sought:

> If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action [and therefore not violative of the ADA] provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.[67]

Thus, the 40-year-old mother of three children, on welfare, with an absent husband, who must pay full fare as she daily takes public transportation in search of a job, cannot complain of age discrimination, even though if she were only a student, or over 60, she could ride the buses at a reduced rate. This is because, under the HEW regulation, she is not excluded from participation in the program--to wit, the mass transit system. Of course, this is a semantic game. She is excluded from the special benefits "program," and that is the only one of concern to her.

V. THE SIGNIFICANCE OF THE ADA FOR CONSTRUCTING, OR ENHANCING, AN AGE-INTEGRATED SOCIETY

The Age Discrimination Act is easy to criticize, because it is so obviously deficient in so many readily apparent ways:

- o An empirical basic supporting the need for the statute is largely absent;
- o The legislative history leading up to the statute is particularly uninformed, and therefore particularly unenlightening;
- o The very structure of the statute--imposing a penalty for an evil which a study first had to establish--reveals an exceptional abdication of legislative responsibility;
- o The ostensible rigor of the statute, as expressed in its statement of purpose, is refuted by a standard of reasonableness employed in exceptions which trench so deeply that they leave little, if anything, in violation of the Act;

- The HEW government-wide regulations implementing the Act compound the ambivalence enbodied in the statute itself.

The conclusions to be drawn seem inescapable. The Age Discrimination Act, rather than leading the way towards an age-integrated society, actually reveals how ambivalent this society is about the purported vice of ageism. Discrimination in the abstract is easy to deplore; defining that discrimination, at least in the context of age, is the difficult task. The Act reveals that the Congress chose a means of definition which preserves, rather than attacks, the very "ism" so readily condemned in rhetoric.

The explanations for this ambivalence are difficult to identify, and indeed may be beyond the scope of this paper, although not necessarily beyond the abilities of the readers of it.

Perhaps the problem is one of empirical support. Even the Civil Rights Commission's Age Discrimination Study does not adequately document the existence of ageism--at least as perpetrated by recipients of federal financial assistance--given its methodological weaknesses.[68] Congressional antipathy--or more generally, societal opposition--to ageism simply may not be able to be commandeered until the vice being condemned is more strenuously, and substantially, set forth.

Perhaps the problem lies in the difficulty of defining discrimination as a concept. At least in the areas of racism and sexism, the victims are fairly clearly seen: one is either Black or he is not; one is either a woman or she is not. In contrast, age--the trigger for discrimination in the context of ageism--is a characteristic which we all possess to a greater or lesser extent. It is more difficult, then, to locate the critical juncture at which a given decision focused on a forbidden criterion--to wit, age. Moreover, to redress the wrong of ageism is to impose burdens on others on the very basis of that forbidden criterion. To be more specific, in any given program, there is a finite number of dollars available. To exclude those over 50 is to thereby make more room for those under 50. To not allow exclusion of the aggrieved age group is, in turn, to make less room for those outside the group. Thus, in the name of assuring that 50-year-olds participate, some 40-year-olds must be rejected--because of their age, ironically. This process contrasts with redress in the areas of race and sex. If Blacks have been excluded because of discrimination, then eradication of the discrimination leads, presumably, to the enhanced participation of Blacks--but typically not at the expense of other Blacks.

The Age Discrimination Act further falls short because Congress simply did not view ageism as being as pernicious as racism and sexism. This of course is likely in part because of the lack of a persuasive empirical base for action, and because, also, of the difficulty of defining the evil. No doubt, however, there is another reality here--the absence of that tangible, documented

history of deprivation and denial which racial minorities in particular have suffered, and which women as well have experienced. Age simply may well not be, as a matter of fact, as invidious a basis for classification as are these other immutable characteristics.

A correlative of this perception is the fact that age indeed is a useful basis for making distinctions--far more so than is race or gender. Thus, the case for age integration lacks an historical imperative, while the case against it possesses a pragmatic one. The task, perhaps, for those who seek an age-integrated society is to demonstrate that the cost of alternative bases for decision making are tolerable, and that those bases are effective.

Finally, there are some further observations worth addressing. These in some respects stand apart from the foregoing conjecturing, but in part they are integrally tied to it. First, there is the matter of the Age Discrimination Act's undiscriminating extension to all age groups. The legislative history, in one of Congress' few lucid moments, makes clear that the Act is intended to apply across the age spectrum.[69] That breadth of course generates the already noted problem of defining discrimination when, in the name of helping one abused adult group, another adult group, also possessed of age, in effect suffers. But this extension to all ages assumes a different type of significance in the consideration of non-adults. It may well be that children and youths do not, after all, have the same rightful claims to freedom from age-based decisionmaking as do adults. With due deference to childrens' rights advocates, it still is likely not amiss to hold that children, at least under some age, are not yet fully developed, either physically, intellectually, emotionally, or in terms of judgmental abilities.[70] Thus, to impose upon a child the requirement of attending school--a requirement defined in age terms, is a considerably different matter than would be a correlative requirement that all persons aged 30 to 40 must attend heart attack prevention classes, without any room for personal choice as to that attendance. Both impositions are age-based, but they are different in quality.

Apart from the physiological bases for differentiating between adults and non-adults, there is another dimension as well. A disability imposed upon a child for, in effect, possessing too few years, is one wich she will eventually outgrow. In contrast, a disadvantage imposed for being too old is inescapable, given that we only grow in one direction. While one would hardly want to use this reasoning to justify throwing children in prison without due process--something which the Constitution bars as to adults--or otherwise denying essential fairness to youngsters, nonetheless there is some solace, in some settings, in recognizing that the burden borne by the non-adult is temporary in nature.

It may be, after all, that ageism should be treated as a piece, with age integration being considered without regard to the actual ages of any individuals. That conclusion, however, at

least ought to follow some careful thought. The history of the Age Discrimination Act at least reveals that that much was missing.

A different concern--and one which is in some ways the really troubling silent factor underlying the Age Discrimination Act--is that generated by the plethora of governmental programs favoring youngsters and the elderly. The HEW government-wide regulation alluded to this concern when the agency promulgated a provision saving from destruction so-called "special benefits" programs.[71] But that exercise was really one almost cynical in substance. The regulation holds that special benefits for children and the elderly will not fail, so long as other persons are not excluded from the general program of which the special benefits are a part. That of course begs the question. The person concerned about a special program for which he is barred is concerned about <u>that</u> program itself; he does not care that in some wider sense he can gain access to the system of which the special benefits are a part. It is the special benefit which he wants. And because he is the wrong age he cannot have it.

The Age Discrimination Act on its face seemingly ignores the problem of benign discrimination. Actually, its exceptions--and the HEW regulation--preserve the status quo. But query whether an age-integrated society can be achieved if those who most deplore ageism--e.g., the elderly--at the same time are the group who most strenuously demand governmental programs and assistance from which the young are excluded. It is increasingly popular to talk about the potential generational conflict being spurred by the burdens of rapidly accelerating Social Security deductions from workers' paychecks, deductions which go to pay for growing payments to their retired elders. It may be that the Age Discrimination Act--with its ostensible goal of a society free of ageism--is really the better mechanism for focusing on the problem. Needless to say, the Congress either did not even perceive the issue, or, if it did, it ignored it. (Of course, it may be that Congress indeed, by passing by the issue, actually intended that special benefits fall. The drafters of the HEW regulations did not think this likely, however; given the history and content of the Act, the HEW drafters are almost certainly correct in their understanding of the Act.)

The Age Discrimination Act, then, is a classic case in so many ways. It is useful for studying the peculiarities and inadequacies of the legislative process; instructive in studying the role of administrative agencies in implementing legislation; educational in revealing the conflicts which arise in translating social policy into law; and reflective of society's ambivalence in dealing with a vice generally deplored, but still only crudely understood. Clearly, the Act is a useful vehicle for turning to the broader issue of an age-integrated society. Clearly, also, it provides many problems, and likely no answers.

REFERENCES

1 42 U.S.C. §§6101 et seq.

2 See e.g., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 et seq.

3 See e.g., the Equal Credit Opportunity Act, ad amended, 15 U.S.C. §§1691 et seq.

4 These figures are derived from Schuck, "The Graying of Civil Rights Law," 60 Public Interest 69, 70 n.1 (1980).

5 This figure is derived from Cappalli, R., Rights and Remedies Under Federal Grants 11 (1979).

6 45 CFR Part 90.

7 The Twenty-Sixth Amendment to the Constitution bars the Federal government and the states from setting a voting age higher than age 18.

8 For a compilation of state provisions--some of which may have been changed since the publication--limiting eligibility for important state offices (e.g., governor and state senator) on the basis of age, see Note, "Developments in the Law--Election Law," 88 Harv. L. Rev. 1111, 1223-1224 (1975).

9 United States Constitution, Article I, Section 3.

10 See e.g., Gault v. Garrison, 569 F.2d 993 (7th Cir. 1977), cert. denied, 440 U.S. 945 (1979).

11 See e.g., Trafelet v. Thompson, 594 F2d 623 (7th Cir. 1979), cert. denied, 444 U.S. 906 (1979), upholding an Illinois law requiring the retirement of state judges at age 70.

12 See e.g., Ill. Rev. Stat., Ch. 25, Sec. 10-2.1-14.

13 See Usery v. Tamiami Trail Tours, Inc., 531 F2d 222 (5th Cir. 1976).

14 See e.g., Hammond v. Marx, 406 F. Supp. 853 (D. Me. 1975).

15 See e.g., United States Commission on Civil Rights, Age Discrimination Study 76 (1977). The Age Discrimination Act has been interpreted by the Department of Health, Education and Welfare as barring such discrimination. See e.g., 44 Fed. Reg. 33768, 33773-33774 (June 12, 1979).

16 See e.g., Kantrowitz v. Weinberger, 530 F.2d 1034 (D.C. Cir. 1976), cert. denied, 429 U.S. 819 (1976).

17 See e.g., 42 U.S.C. §402(d).

18 See e.g., Johnson v. City of Opelousa, 488 F. Supp. 433 (W.D. La. 1980).

19 See e.g., Hall v McKenzie, 537 F.2d 1232 (4th Cir. 1976).

20 See Sudnow, "Dead on Arrival," in Sociological Realities: A Guide to the Study of Society 225 (1971).

21 See e.g., Llyod v. RTA, 548 F.2d 1277 (7th Cir. 1977).

22 See Age Discrimination Study, supra note 15, at 20-21.

23 Cf., Neugarten, B. "Policy for the 1980's: Age or Need Entitlement?." The National Journal Issues Book 48-52, (1979).

24 Cf., Davis, K. C., Discretionary Justice (1969).

25 Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1972).

26 See e.g., Bolling v. Sharpe, 348 U.S. 497 (1954).

27 See e.g., Cohen v. IIT, 524 F.2d 818 (7th Cir. 1975).

28 See e.g., Vance v. Bradley, 440 U.S. 93 (1979); Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976).

29 The Supreme Court has applied lesser protective constitutional standards to juveniles in areas where, absent the youthfulness of the parties, more rigorous judicial scrutiny would apply. As Justice Powell said in a case involving the question of parental consent being a pre-condition to a child obtaining an abortion, Bellotti v. Baird, 443 U.S. 622, 634 (1979):

> We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child-rearing.

Of course, no standard less than mere rationality will apply, even as to non-adults. Where the lesser status of youngsters becomes relevant is in those instances where the courts have held that the issue involved--such as First Amendment rights or privacy--would ordinarily require particularly stringent judicial examination. In these contexts, the non-adult status of the aggrieved individual can lead, in accordance with Justice Powell's explanation, to a lesser level of judicial analysis. For further discussion of the question of ageism in the context of non-adult victims, see Section V, infra.

30 Morey v. Doud, 354 U.S. 457 (1957), was overruled in New Orleans v. Dukes, 427 U.S. 297 (1976).

31 440 U.S. 93, 111-112 (1979).

32 Gulf C. and S.F.R. Co. v. Ellis, 165 U.S. 150, 155 (1897).

33 Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, at 316 (1976).

34 42 U.S.C. §§2000d et seq.

35 20 U.S.C. §§1681 et seq.

36 29 U.S.C. §794.

37 H. Rpt. No. 94-67, to accompany the Older Americans Amendments of 1975, 94th Cong., 1st Sess., at 15 (1975).

38 See remarks of Rep. Randall (D. Mo.), Congressional Record, at H2485 (April 8, 1975).

39 S. Rpt. No. 94-255, to accompany the Older Americans Amendments of 1975, 94th Cong., 1st Sess., at 37-39 (1975). Secretary Weinberger's problems are detailed more fully in note 45, infra.

40 H. Conf. Rpt. No. 94-670, to accompany the Older Americans Amendments of 1975, 94th Cong., 1st Sess., at 57 (1975).

41 See remarks of Sen. Eagleton, at S20687 (November 20, 1975).

42 The House bill, H. R. 3922, provided:

> Sec. 302. It is the purpose of this title to prohibition discrimination on the basis of age in any program or activity receiving Federal financial assistance.

43 H. R. 3922, Section 303(b)(1)(A).

44 H. R. 3922, Section 303(b)(1)(B).

45 Secretary Weinberger wrote, in relevant part:

> Neither the bill not its legislative history indicates what factors would be "reasonable." Even a very preliminary review of the potential ramifications suggests a myriad of unexplored issues such as the following:
>
> Is it reasonable for school systems to exclude three-year-olds from kindergarten classes? Or eleven-year-olds from high school classes?
>
> Can a medical or dental school bar a 50-year-old person from taking one of its limited classroom seats because his or her life expectancy suggests a practice of relatively brief duration?....

S. Rpt. No. 94-255, supra note 39, at 37-39.

46 See remarks of Sen. Eagleton, Congressional Record, at S.20687 (November 29, 1975).

47 Section 302, provided, prior to its amendment in 1978:

> It is the purpose of this title to prohibit unreasonable discrimination on the basis of age....

48 H. Conf. Rpt. No. 94-670, to accompany the Older Americans Amendments of 1975, 94th Cong., 1st Sess., at 56 (1975).

49 Id. at 59.

50 Ultimately, the Civil Rights Commission produced the Age Discrimination Study (1977), in which the Commission concluded that discrimination indeed existed in the 10 federal programs it had selected for examination, as well as in the field of higher education. The Trenchancy of the Study is subject to serious question, however: the Commission took a very broad view of what would constitute discrimination; any disproportionality between the percentage of program participants of a given age group, as compared to the percentage of that age group making up the potential client population in the community at large, would suffice.

51 H. Conf. Rpt. No. 95-1618, to accompany the Older Americans Act of 1978, 95th Cong., 2d Sess., at 87 (1978).

52 H. Conf. Rpt. No. 94-670, supra note 48, at 56.

53 Section 304(b)(1)(A), 42 U.S.C. §6103(b)(1)(A).

54 The HEW government-wide regulations, 45 CFR Part 90, provide in 45 CFR §90.13:

> "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

"Significant changes" are not defined.

55 45 CFR Part 90, §90.14.

56 Section 304(b)(1)(B), 42 U.S.C. §6103(b)(1)(B).

57 45 CFR Part 90, §90.15.

58 Ibid.

59 44 Fed. Reg. 33768, at 33783 (June 12, 1979).

60 44 Fed. Reg. 33768, at 33771 (June 12, 1979).

61 42 U.S.C. §§2000e et seq.

62 See e.g., Griggs v. Duke Power Co., 401 U.S. 424 (1971).

63 Section 304(b)(2), 42 U.S.C. §6103(b)(2).

64 45 CFR Part 90, §90.3.

65 44 Fed. Reg. 33768, at 33771 (June 12, 1979).

66 Ibid.

67 45 CFR Part 90, §90.49(c).

68 See note 50, supra.

69 H. Rpt. No. 94-67, supra note 37, at 16.

70 See e.g., "Children and Other Political Naifs," Psychology Today 56 et seq. (November, 1980).

71 See text accompanying notes 65-67, supra.

APPENDIX II

AGING IN THE FUTURE: FUTILITY OR FRUITION?

Maggie Kuhn & Tish Sommers

When our founding fathers met to sign the Declaration of Independence, many of them wore powdered wigs and clothes designed to add years to their appearance. Age connoted maturity, wisdom, and access to power. In England, where these styles prevailed, primogeniture assured access to status and wealth to the eldest in the ruling families, and seniority rights were prevalent. But the New World soon broke with whatever elements of a gerontocracy had been brought from the old country, and the Industrial Revolution took care of what little remained. A land in the process of rapid change diminishes the role of elders, who are identified with sentiments of the past rather than with the new technologies and ideologies of the rapidly shifting present.

At the same time, as the roles and status of older persons have steadily diminished, their numbers have correspondingly increased, until the nation now is faced with a sizable and growing percentage of seniors who have been elbowed out of the mainstream or, reflecting society's view of expected behavior, have removed themselves voluntarily. Could this increase of a senior population on the sidelines of productive interaction signal the rise of generational barriers such as we've never seen before? Or will generations draw together to ensure their mutual survival? If the percentage of elders continues to increase as demographers predict, will the result be a turn toward power to the aged, or just the reverse? We can't say, but surely the eighties will be crossroad years. What happens in the next two decades could decide the quality of life in old age for those now in their thirties. It could decide the quality of life for all of us, for the fate of elders is inexorably linked with the welfare of all.

This statement will examine two contrasting scripts for the future: the first presumes that barriers between generations continue to rise; the second presents new visions for an age-integrated society which has come to grips with some key societal problems. How to move from the present to that imagined millennium is the most arduous part, but the stakes are such that we had better put our minds to the task.

The Gloomy Script

Suppose in the next few years, things do not go well: the arms race is speeding up; inflation is not contained; and oil supplies

are periodically threatened. With the presumed goal of fighting inflation and cutting the cost of government, all "entitlements" are reexamined--Social Security, Medicare, government pensions and the like. In the name of "back to basics," hard-fought-for benefits are nibbled away. First there is reduction of survivor and dependent benefits, then age eligibility requirements are raised, and then the "welfare elements" of Social Security, such as disability benefits and minimums for those with limited credits, are eliminated. State controlled means-tested programs are the proposed alternative. Changes in the rules for determining cost of living increases "saves" millions of taxpayer dollars. By utilizing the effects of inflation to cut benefits and services, SSI (Supplemental Security Income) has been sharply reduced, although it fares better than other welfare programs. The Older Americans Act has become a mere token of "benign neglect," and inflation has made most pensions practically valueless. At the same time, the job market is thoroughly out of kilter, with shortages of labor in some technical fields, and epidemic unemployment among the young, the old, and other marginal workers.

There is a growing backlash against elders, broadly supported by the media, which leads to further curtailments of entitlements. Old people are just too expensive, considering the nation's priorities. "They're getting more than their share." "They're not productive and most of them are quite well off, anyway." "They've had their turn, and now it's our's." There is rising conflict and crime as neighborhoods deteriorate. Self-imposed "house arrest" of old people, based on fear of the young, becomes ever more common.

Rampant gerontophobia breeds the inevitable reaction--further separation of the older population from the issues of society and from concern about the future. Well organized, special interest voting blocks of seniors vote against school bonds, environmental issues, and any social improvements which do not directly benefit them. For the better off aging population, there are well policed ghettos (called leisure worlds), but for the majority, especially widows and minority elders, the situation is grim indeed.

Individualism runs its course. The "me-first" mania becomes accepted doctrine, and social policy is determined largely by well-financed special interest groups who are able to manipulate public opinion. Individual problems are no longer viewed as reflections of social ills, but are attributed to poor personal planning and bad luck. As social responsibility lessens, there is an ever growing population of young and old who are dependent, alienated, powerless, and poor, who take their frustration and rage out on each other. The intergenerational cold war is well entrenched.

Now suppose that oil supplies are cut off from the Middle East. In the name of honor, the United States girds for battle. The

"era of limits" is applied to everything except goods and services destined for war. Nuclear war games and disruption of "vital resources" inevitably lead to an outbreak of hostilities. More than ever, the large population of the aged is seen as a handicap. At last a pharmaceutical breakthrough--a Death-with-Dignity pill! Already tested on a large number of people suffering from incurable diseases in underdeveloped countries, it has been shown to work quickly and to cause no pain and suffering. Now it is available for any who want to take advantage of this technological advance, and for those who don't want to be a burden to society. No one is to be forced to take it, of course. Most religious denominations, which in an earlier day had warned against the dangers of euthanasia, are now in favor of its use, with appropriate safeguards to be sure there is no undue coercion, of course.

The arms race escalates through the inevitable "incidents," the undeclared military engagements drag on, and the nation's resources are further depleted. As more younger men and women are killed in the unwinable conflict, pressure increases to eliminate the non-productive elements in society, primarily old women. The President directs a special message to this constituency, urging them to make their sacrifice for their country by taking the pill, and churches all over the land give comfort to those who answer their nation's call, telling of the many mansions in heaven awaiting them.

If this script continued, the human race would come to an end, for sooner or later, all stops would be pulled and the atomic holocaust would begin. But we are incurable optimists. We can't really believe that the human race is speeding toward its own extinction, like a Mt. St. Helens ready to blow. There resides in all of us a strong survival instinct. We may go up to the brink but we won't jump over, and a crisis may be what it takes to shake up our thinking and turn us around. As a matter of fact, crises are the mother's milk of social change. They cause a great deal of pain and suffering but appear to be the only time that public opinion is sufficiently shaken to make a major change of course possible.

Visions for a New Society

Some vision of an alternative future may speed that turnaround and provide sustenance when the going gets tough. In that vein, here are some ideas for the future of aging that won't be found in gerontological books.

First, let's recognize that life is a continuum, from conception to death. The rigid life-span boxes of youth, adulthood, and old age, with their corresponding functions of education, productive work, and leisure are no longer viable. Barriers between generations will be reduced when all ages go to school, participate in productive life, and enjoy periodic leisure. Adolescence and

young adulthood will be more rewarding and less drawn out; the middle years will become less pressured when the burden is shared; and old age will be far more gradual and revalued in the process.

Some models for the future market place are already being tested, here or abroad. Work sabbaticals are gaining favor in management circles and have long been encouraged by academics. But the concept could be greatly expanded so that everyone had the opportunity of taking a year off to study, to test new life styles, or to perform community services. Unofficially, and illegally, many persons utilize the unemployment compensation system for these "breaks" in work. But once recognized as a human need and a socially desirable life pattern, an adjustable rhythm of education-work-leisure could become the recognized norm around which the workplace is organized.

To make this change of employment patterns workable, schools must be restructured to provide life-long education. Since classes would necessarily be intergenerational, knowledge and skills could more easily be transferred from one generation to the next, reducing the load on the teacher. Schools would become centers of exploration and personal growth. Already there is great interest in "reentry students" and emeritus curricula, but these are just the opening wedges for a complete reordering of the educational system to make it truly lifelong learning.

Leisure is being restructured too. Currently suffocating in consumer goods, leisure holds the promise of revitilizing the spirit. When the "me" becomes the "we" generation, leisure time will focus upon enriching the lives of those around us. Volunteerism can take on new meaning when it no longer is the sole province of those with limited access to paid employment, namely youth, women, and older persons. Volunteers can create their own jobs, take vacations at will, choose priorities, work on causes of deep concern, and select tasks for self-actualization. Such volunteerism provides joyous occupations. When the life-span boxes have been eliminated, when all ages and all people have equitable access to paid employment, volunteer work will become the pearl of leisure time activities.

None of this will be possible, of course, unless there is a functioning full-employment policy. The right to a job must become the most basic of civil rights. Otherwise generations will be pitted against each other for paid employment and there will be no end of rationales for excluding the young, the old, the minorities, and women from competition for scarce jobs. Who is to provide these jobs? Society: the "private sector," cooperatives, self-employment, and the government as employer of last resort. Without dismissing the barriers to such a policy, from a survival viewpoint there is no other way to go. And in the long run, the social costs will be far less than in maintaining and subduing an ever growing alienated population.

In our vision, there is a United States Unarmed Services (USUS) which recruits large numbers of unemployed of all ages to provide auxiliary educational forces, for work on energy conservation projects, and to give primary health care. The USUS is strong on equality of the sexes and opposed to any age bias.

Political parties wither away, replaced by regional councils which have a great deal to say about nominations to national governmental bodies. The rise of neighborhood block organizations makes officials far more sensitive to local citizens and more fearful of the consequences of malfeasance.

Health care is turned around on its head, with preventive care and health education becoming top priorities. The "healthy block" becomes the cornerstone of neighborhood organization, with emphasis on healthy life-styles and mutual help in delivering primary care for minor diseases and injuries. Each neighborhood or workplace unit is linked with larger and more specialized centers for referral. Health care, like employment, is now considered a human right. The fee-for-service principle has been discarded as inflationary and leading to inequality of care. A National Health Service has been instituted which provides cradle-to-grave attention to physical and mental well-being. In our vision, block organization grows out of necessity.

Lack of confidence in the monetary system leads to the rapid growth of barter. Older persons, especially women, usually manage the barter outlets, probably because they are more comfortable with arranging an exchange of zucchini for a haircut, for example. But to make the system work, neighbors have to meet and trust each other and, in so doing, develop many more ideas for mutual help. Gardening flourishes as never before, and even urban areas like Chicago devise enormous roof solariums as a side benefit of solar heating systems. These are usually managed by neighborhood cooperatives, augmenting the enormous ase of home gardening and food processing stimulated by local organization.

As for all those social workers, gerontologists, and service providers, most of whom would now be without jobs, when they find themselves in the same boat with the clients they had earlier served, they band together in S.H.E.O.--the Society for Helping Each Other--and prove to be effective advocates and organizers of "survival schools" out of which come the most innovative ideas of the period.

It is they who urge that old people, too often discarded, be integrated into the new structure. There are brainstorming meetings all over the country where elders discuss what they can do best. "We can arbitrate disputes, educate and teach old skills, we can monitor projects based on our experience and judgment, we can be advocates, social historians, advisors, and ethical counselors, and futurists," they say. "We can tell about the past and help with management of children." So Elder Training is born.

And S.H.E.O., a very age-integrated organization itself, also comes up with a brand new kind of pre-retirement training. Instead of counseling people on how to let up, enjoy leisure, and make a shrinking budget stretch (none of which worked too well anyway in heavy inflation), the new counselors and mutual help sessions are dedicated to preparation for new freedoms and responsibilities. The latter part of life should be its climax--a time to really make a mark, either by creation or a special job, or a new civic or community role. But people need time and help to prepare for either. This revised pre-retirement planning, now called Commencement Charting, includes large numbers of persons in their 40s, 50s, and 60s, and this program has now absorbed a large number of S.H.E.O. members, who have created jobs for themselves in the process.

To cope with the continuing shortage of energy, a corps of Home Conservation Specialists has been organized, which visits all types of organizations to collect ideas on how to reduce energy waste. Realizing that direct involvement helped to make the rationing plans of World War II effective, these persons serve both as information gatherers and as promoters of conservation, for when people contribute to a plan of action they are far more committed to its success. Like USUS, the Home Conservation Corps is inter-generational, because all ages need to become involved to make it work.

Continuum of Care has finally come into its own, with quality home health care at the heart of it. Gone is the concept of "custodial care" for frail elders. In its place, the primary caregiver acts in the capacity of teacher--to the patient, family members and potential supporters. Maximum independence is the goal. Since helping people develop and maintain this goal requires patience, knowledge, and life experience as well as specific training, the job is adequately paid. This new concept in turn stimulates creation of new alternative options to institutionalization. Cooperatives of persons needing care are viable for some, shared living arrangements with peers or with other generations work for others. With sufficient support systems, relatives or friends are more ready to bring persons in need of care into their homes. Adult day care centers are available throughout the country.

One alternative to nursing homes is called the Last Perch, a live-in community of compatible people, all living their last days in a joyous and beautiful setting. The key difference from present institutions is that the Perch participants maintain control of their environment and their lives. They decide who is admitted, the type of food, the persons who may come to study them (in exchange for service), the decor, and social life. They have access to a printing press, their own TV show, their own computer, and their own beautiful garden to surround their last years with flowers. Last Perches flourish across the country, some comprised of aging gerontologists.

In the process of all these changes, the concept of the family has been broadened. It has been redefined as two or more persons who share resources, goals, values, and life styles over time. It is a network of responsibilities and decision making which goes beyond blood, legal ties, adoption, and marriage. Once the family is seen more flexibly, various models of intergenerational housing have developed, based upon the needs of these new "families of choice." This in turn encourages revitalizing of communities, spurred on by intergenerational neighborhood co-ops. As family structure changes, there is greater division between the sexes of responsibilities for nurturing and care of the young and infirm.

As we see the future, having lived full lives, we take a new look at the past and find there is much on which to build. We can't start from scratch, but we can draw from that past in order to move upward. As Francis Bacon has said, progress is a winding staircase. When the past is valued, elders are valued. As a nation we should reconsider our own positive national values and redefine them in light of today's realities. "Rugged individualism": we can create opportunities for individuals to participate by building strong mutual help structures at the grassroots. "Equal rights and opportunity for all": we need lots of trial and error in restructuring the workplace and experimen-tation with bringing women, minorities, and older people into full partnership.

Freedom, our most precious heritage: we must beef up the responsibility side of that coin and shift over from the "me" to the "we" generation.

Upward mobility: it should neither be a youth-oriented society nor a gerontocracy. Just as social classes of European origin were discarded in a new land, sharp age divisions will be abolished in the future that we envision.

To get from here to utopia, we can not "go gentle," as Dylan Thomas said, but as revolutionaries. The elders of the tribe, who by virtue of their experience have the greatest responsibility for survival of the whole, should be pointing out the dangers of the present course, exposing the crushing dilemmas we all face, and offering some alternative perceptions. The young, with most to gain from a new direction and the most to lose without one, can help provide the vigor to fuel a change of course. Minorities have a common stake in such a turn-around, and women, especially those who are poor and alone, can learn to rage as well as nurture. The major dangers we all face are alienation and apathy, stemming from loss of hope. But homo sapiens is a self-evolving animal that can create its own long term destiny. For us, the choice is very clear.

APPENDIX III

NEW IMAGES AND ATTITUDES

Demetria H. McJulien

The rapidly increasing number of elders in our society demonstrates a need to address areas that may affect the quality of their lives as they seek to maintain a sense of dignity, self-worth, social justice, and positive social status. In order to make these assessments, it is of immense importance to consider concepts such as attitudes, stereo-types, and beliefs that relate to the imagery of how elders are perceived. The future of this growing population of older people is dependent to a great extent upon the way the group is perceived by themselves as well as other members of society. Beliefs and attitudes play an important part in human activities because they reveal values and preferences and influence behavior. Beliefs about and attitudes toward older people and aging historically have been very negative, but this is changing. American society is in transition in its beliefs and attitudes. This is a hopeful development. New and positive beliefs and attitudes about older people and old age are competing with old stereotypes. New images of later life are emerging that should be reinforced through increased use of older people in ways that display their competence and resourcefulness, both in the media and in daily life.

Negative attitudes result in the underutilization of older people as a resource and their unwillingness or inability to seek a variety of needed services. Prejudice toward older people leads to discrimination against them and increases generational conflict between the young and old; it creates problems that will have long-range effects on both the elderly and on society. It is vitally important, therefore, that concerted efforts be made consciously to present the older person in appropriately positive ways. This goal can partially be met by creating an age-integrated society where negative attitudes toward older people are convincingly dispelled.

Negative attitudes toward older people reflect ageism that encompasses age prejudice, age discrimination, and age stereotypes. Ageism refers to any attitude, action, or institutional structure that subordinates a person or group because of age, or to any assignment of roles in society based on age.

Seventeen years ago, the National Urban League published a major study which expressed the dual discrimination of ageism and racism encountered by a minority group. Institutionalized inequality is also reflected in another ism, sexism. These three isms, although similar, have a different history, dynamic, and intensity; they may require different strategies of change.

Aging as a social process has not always historically been against the best interests of older people. In the early era of America, old age was valued. During the past century we increasingly valued youthfulness and; elders, on the other hand, became increasingly victims of negative images. Today, fortunately, beliefs and attitudes toward later life and older people are changing for the better.

Everyone has an image, positive or negative, about older people and aging. Attitudes may vary according to the situation and/or the person. Everything that an individual says, every action taken, every decision made, is related to consciously or unconsciously held beliefs and attitudes. Since attitudes are known to have a strong influence on perception and behavior, those who study the concept of aging have devoted considerable attention to research on attitudes concerning older people. These attitudinal studies note the ability of an individual to feel differently about a specific older person and about older people in general. For example, an elderly former elementary school teacher may be held in esteem while the status of an elderly Supplemental Security Income (SSI) recipient is downgraded. People do not always behave in ways that their implied or stated preferences would lead us to expect. This does not diminish, however, the evidence that attitudes index preferences and probable tendencies to act.

The concept of attitudes, theories and research in attitude formation, and attitude change and attitude measurement have been the focus of a great deal of research. From the evidence presently available, it is clear that attitudes toward older people are not uniformly negative and over time attitudes have changed in a positive direction. Several factors have been identified that may have limited still greacer progress. More intergenerational contact and more reliable information about old age in the media are needed.

The most reliable, well-known, and extensive study ever undertaken to determine the public's attitude toward aging and their perception of what it is like to be old in America and to assess tne elderly's views and attitudes toward themselves and their personal expriences of old age is the 1974 poll conducted by Louis Harris and Associates for the National Council on Aging. Their findings identify some widely held negative beliefs, myths, and stereotypes about older people. Persons under 65 years of age do tend to feel that older people are very fragile, frail, in general poor health, mentally fuzzy, only a short step from senility, clearly incapable of learning new things, petulant, slow-witted, and unable to sustain attention. Older people themselves share many of these same stereotypes. But, when asked about themselves, they seemed to feel that they were the exception to the rule. These private attitudes, therefore, are contradictory to the publicly stated images. This contradiction reflects what may be called "pluralistic ignorance among the aged" and, one might add, pluralistic ignorance of Americans generally about later life. This "pluralistic ignorance" expresses an image of

later life that is not only contradicted by private perceptions but also by external evidence of the actual characteristics of most older adults. The contradiction is a sign of and a basis for progress.

In spite of the often very gloomy images of older people, it is believed that during the past 30 or 40 years Americans have been developing more favorable and realistic attitudes toward older people. Recent published literature on attitudes toward old age and elderly persons documents that behavior toward older people may be far more favorable than stated attitudes would lead us to expect.

The elderly are not a static group. It is good to be able to recognize a positive trend in attitudes toward the young-old and old; however, it is important to acknowledge that elders as a group are constantly changing. Today's elders are very different from their predecessors and will be from the group presently approaching old age. Additional improvement may be slow because institutionalized negative concepts and values change slowly; the deterioration of advanced age and the prospect of final withdrawal will continue to be negatively held; and further extension of life and growing numbers of aged will increase the prevalence of older adults who manifest circumstances which have given rise to negative stereotyping. Therefore, what appears to be improved attitudes toward older people cannot be taken for granted.

Professional providers of services to older people must be aware of their own attitudes and the frequent lack of life experiences in the generation which the older persons represent. Professional persons, sometimes without awareness, carry into their activities stereotyped attitudes which tend to devalue older people. These negative attitudes can lead behaviorally to "therapeutic nihilism;" that is, a generally pessimistic attitude of many professionals about the usefulness of working with older clients. Alternatives to institutionalization are often not sought. Further, the underutilization and under-representation of older people in service programs may be attributed to the residual images on the part of both the service provider and service receiver. Professionals must assume some responsibility for changing the attitudes of those about them, not the least of whom may be the older people themselves who often come to believe stereotypes about themselves as self-fulfilling prophecy.

Nearly sixty years ago Walter Lippman applied the term "stereotype" to describe the "picture which people carry in their heads." Stereotypes are shorthand ways of thinking that attempt to make the world more simple than it actually is. It clearly is difficult and inconvenient to deal with the kind of complexities one actually experiences and older adults are no exception. We may know that all older adults are not alike and our experience with particular older adults may confirm this belief. Widely held stereotypes may persist in spite of correct information.

This fact has led some observers to conclude that strategies of change are most effective when they concentrate on structural problems of legal access to essential goods and services rather than educational strategies to change stereotypes and images. Specifically, there is a basis for arguing that combatting "ageism" is more effectively expressed in the form of legal facilitation of access to goods and services than in programs that attempt to manipulate media images of older people.

The merits of these alternative strategies continue to be debated among those who are concerned about racism, sexism, and ageism. And we observe that, in the absence of agreement about strategy, both anti-discrimination and educational strategies are pursued possibly in the hope that they are ultimately complementary.

These considerations are relevant to the various tasks that have been identified as important; specifically, 1) the Age Discrimination Act; 2) the evidence that the changing characteristics of younger cohorts of older adults neither fit the prevailing stereotypes nor are perceived by older adults as describing them accurately (i.e., older adults have an increasingly positive image of themselves); and 3) anti-discrimination measures coupled with realistic presentations of the potential of older people constitutes a desirable combination of strategies.

Stereotypes can and do change, although there is a tendency for them to stubbornly persist in one form or another. We are not certain of the most effective strategies for changing attitudes and stereotypic beliefs or for combatting ageism. Mixed success has been achieved through educational programs and personal contact with elders, very young people, college age, and older individuals. Conscious efforts and the implementation of a variety of educational programs will be required to change the negative direction of many attitudes toward older people.

It has generally been assumed that mass media has influenced greatly the continuation of age-related stereotypic images of older people by the use of negative labels, terms, or descriptions of older people in television programming, advertisement and other media; i.e., radio, newspapers, etc. Such evidence is documented in a comprehensive discussion in the American Jewish Committee Report entitled Images of Old Age in American Society. It appears that media resources could be more effectively used to change negative images by presenting more realistic and positive role models and accurate pictures of older people. An example of an effort in this direction is the OVER EASY program. The OVER EASY television series represents the nation's media response to the needs and concerns of elder people. It encourages positive social attitudes, is changing the external images of aging in the United States, and is helping change the self-image of the millions of older persons who watch the program regularly. Through efforts such as these, it appears that the consciousness of media regarding stereotypes toward older people has been

raised. Further, the 1981 White House Conference on Aging via its Technical Committee on the Media will examine major issues of why and how the mass media portray elders and the concept of aging.

As with other areas that focus upon ageist images, the findings are not conclusive, thus limiting the ability to rectify totally the negative images of older adults in the media. The problems encountered in accomplishing this mission are similar to those of other areas in capturing the complexities of older adults and of later life.

Society is in transition. Negative images toward older people are changing. This decade will witness an increasing need to liberate, through social change efforts, the considerable unused potential of older persons as a national resource. The solutions will not be automatic, quick, or easy. The solutions will require commitment of all segments, young and old, to change those unrealistically negative images which are deeply rooted in the mind.

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The following Technical Committee Reports have been published:

Retirement Income
Health Maintenance and Health Promotion
Health Services
Social and Health Aspects of Long Term Care
Family, Social Services and Other Support Systems
The Physical and Social Environment and Quality of Life
Older Americans as A Growing National Resource
Employment
Creating an Age Integrated Society: Implications for Societal Institutions
Creating an Age Integrated Society: Implications for the Economy
Creating an Age Integrated Society: Implications for the Educational Systems
Creating an Age Integrated Society: Implications for Spiritual Well-Being
Creating an Age Integrated Society: Implications for the Family
Creating an Age Integrated Society: Implications for the Media
Creating an Age Integrated Society: Implications for Governmental Structures
Research in Aging

Experts from various fields were appointed by the Secretary of Health and Human Services to serve on 16 Technical Committees, each charged with developing issues and recommendations in a particular area for consideration as background material for the delegates to the 1981 White House Conference on Aging.

the 1981 White House Conference on Aging

Executive Summary of Technical Committee on

CREATING AN AGE INTEGRATED SOCIETY: IMPLICATIONS FOR SOCIETAL INSTITUTIONS

TCES-15

NOTE: The recommendations of this document are not recommendations of the 1981 White House Conference on Aging, or the Department of Health and Human Services. This document was prepared for the consideration of the Conference delegates. The delegates will develop their recommendations through the processes of their national meeting in late 1981.

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I. INTRODUCTION

The distinctive mission of this committee focused on the social meaning and policy implications of Creating an Age-Integrated Society. Six other committees joined in this task, but they concentrated on particular institutional areas--the economy, educational systems, religious institutions, the family, the media, and governmental structure.

The committee approached its task as follows. The phrase creating an age-integrated society was not taken to imply established consensus about social objectives, about the meaning or desirability of age-integration, or about how a society could most effectively implement age-integration if it chose to do so. The phrase was taken as a useful point of departure for discussing the kind of future society we would like to achieve and the realistic basis for an active, optimistic view of the modifiability of institutionalized ways of responding to human needs and aspirations. The phrase was also taken as a point of departure for discussing how new associations and mutually supportive relationships involving persons of all ages might, if facilitated by public policy, benefits all Americans.

A national policy on aging has two goals. The first is to enhance the lives of older men and women by encouraging their full participation in the life of the nation and by multiplying the benefits of long life. The second is to facilitate positive changes in all our social institutions to accommodate increasing numbers of older persons.

To achieve these goals we strive to build a society in which age discrimination and involuntary age-segregation are ended and in which all age groups share equitably its resources and its responsibilities. Recognizing the changing proportions of young and old, we seek to guard against age divisiveness and to strengthen the mutual supports among generations.

The committee concentrated on conceptual issues, on alternative images of our society, and on illustrating some of the policy implications of these alternative images. We sought commonalities that might bind the generations in shared efforts to reduce segregation and alienation; to enhance choice; to increase opportunities for self-fulfillment; to achieve for older Americans a new status and new involvement in the mainstream of society; and ultimately, to discover older adults as a national resource.

II. HOW THE COMMITTEE PROCEEDED

The committee identified and discussed a number of topics important enough to be discussed by White House Conference participants, reviewed evidence related to these topics, and requested background papers from committee members and a consultant. These papers appear as appendices to the full report of the committee.

The committee took a broad view of the data that were relevant to its tasks. Appropriate attention was given to biological, behavioral, and social scientific evidence on the processes of aging, particularly as it relates to how our society currently deals with older people. But attention was also given to the thoughts of historians, philosophers, ethicists, and jurists. We gave particular attention to reports of the mini-conferences as these conferences assessed the adequacy and implications of evidence when applied to our understanding of particular sub-groups of older people such as women, minorities, and older people in rural areas.

The review of evidence had an intellectually liberating effect on the committee. The varied capacities of older adults of the same chronological age and the changing characteristics of older adults of different ages suggest that becoming old may be a far more complex and amendable process than previously thought. If our inferences are correct, we can in fact realistically discuss alternative futures and a new status for older Americans in our society. The future we prefer and intend will be limited, of course, by the realities of old age but, more importantly, by our ability to achieve political consensus about our social objectives and our ingenuity in implementing those objectives.

III. KEY TOPICS AND FINDINGS

New Understanding of Older Adults

Within the broad category of older adulthood, a large variety of lifestyles, needs, and aspirations that reflect gender, ethnicity, religious preference, and socioeconomic status are

observed. With these variations as a caution against over-generalization, on average, younger older adults retain a high level of functional capacity; and for them, continued social integration into the mainstream of society is a primary concern. Older older adults, in contrast, experience an increased risk of impairment; and for them, services to counteract increased dependence are a major concern.

The Changing Significance of Chronological Age

The first topic has a corollary. Chronological age has progressively lost its utility as a simple basis for understanding the conditions and capabilities of older adults and for developing public policies intended to serve them adequately. Chronological age is, at best, only a gross indicator of capacity, behavior, and need.

A Society in Transition

Americans have progressively lost confidence in outmoded negative stereotypes of older people and of growing older. Negative stereotypes are not only outmoded; they are perceived to be outmoded. Age-ism remains common; but it is increasingly under attack. Changing images of age and attitudes toward old people indicate a society in transition, a society rethinking its values. These are positive and welcomed developments.

Toward an Age-Integrated Society?

Age-integration as an objective of public policy should be--and will be--debated as a key issue in the 1981 White House Conference on Aging. The debate is overdue. National objectives for our aging society have remained very general, largely implicit, and inadequately discussed. There is a growing sense that good intentions have not achieved an adequate quality of life for a large number of older Americans and this failure derives, in part, from the diffuseness of and confusion about our policy objectives. Do we have the social ingenuity and political skill to achieve a society in which a new status for older people will help insure that the needs and aspirations of all our citizens can be appropriately served? The committee answers in the affirmative.

On Scarcity

Although the "graying of our population" is not an explanation of scarce social resources, population aging is often used to illustrate a major societal concern about our capacity to serve all our people adequately. Our society has not developed a clear sense of equity to guide discussions of fairness and reasonable-

ness regarding the distribution of societal resources among persons who are at various points in the life cycle. Advocates of older people and older people themselves will need to give careful attention to how well our current resources are being used to achieve our national objectives as well as to the need for new resources. The leadership of the United States has joined White House Conference leadership in declaring a positive and hopeful view of older people not only as consumers of societal resources but also as a societal resource to be developed.

IV. OPTIONS

The committee, concluding that its primary tasks were to explore alternative images for the future of an aging society and to illustrate the implications of these alternatives for public policy, identified three different ways to think of the kind of future society we might prefer:

- o A society in which adulthood is perceived to be indivisible and in which chronological age differences are irrelevant to policy-makers;
- o A society that redefines the social meaning and the boundary of old age; and
- o A society that recognizes older persons as having a special status and special responsibilities.

Image I: Age-Irrelevance

There is increasing evidence and opinion that oldness is, to a large degree, a cultural invention and a bureaucratic convenience that relates in only a crude way to the observed characteristics of very heterogeneous older adults. Age, like race and gender, has been transformed by culture and history into a negative social category that evokes prejudice and discrimination.

The image of an age-irrelevant society offers some clear goals for public policy designed to guide desirable social change. For example, the pursuit of an age-irrelevant society suggests policies stressing

- o the elimination of mandatory retirement;
- o rejection of age-based privilege, exemptions, and special programs;
- o a Federal Council of Age Equity rather than a Federal Council on Aging;

- o programs targeted specifically on the problems of needy, impaired older adults.

Image II: Updating the Social Meaning and Boundary of Old Age

Much that we know about older adults and about the conditions of our older population suggests that age-irrelevance appears to be a reasonable goal when older persons between the age of 60 and 75 are considered. For adults 75 years of age and older, the prevalence of poverty, frailty, impairment, and social isolation appears, on average, to be different enough to warrant special consideration. A distinction between young and older older people does not imply that all persons 75 and older are alike; they are not. But, such a distinction may be a reasonable basis for developing and evaluating public policy. For example, redefining the boundary of old age suggests public policies designed to

- o prohibit mandatory retirement prior to age 75;
- o shift the age-based eligibility for full, untested eligibility for income supports and services to an age higher than 65; and
- o target special programs for older people on the very old.

V. RECOMMENDATIONS

The committee concluded that neither age-irrelevance nor age-redefinition was as attractive or as useful for developing public policy as a third image of the society that incorporates selected aspects of the first two images. This is the image of veteranship, of old age as a new status characterized by enhanced choice, enhanced authority, and enhanced opportunity for continuing development in the interest of encouraging older adults to remain responsible contributing members of society. For example, veteranship implies a very positive view of age-integration and implies

- o Policies designed to achieve age-equity in the distribution of resources; to enhance freedom of choice to work or retire; to eliminate age discrimination in training, recruitment, and employment; and to promote affirmative action in the interest of responsible social participation of older adults;
- o Policies to assure freedom of associational opportunity, to counter involuntary age segregation in public programs, and to encourage intergenerational contact; and

- o Policies to promote social roles that enhance respect for older people and a new status that includes responsibility to contribute to society as well as rights.

Veteranship is a pragmatic prescription for social policy that reflects the ultimate interests of both the young and the old. A new and special status for elders provides a proper basis for broad-based advocacy in behalf of social policies and programs that respond to the heterogeneity of interests, skills, needs and wants that are found among older Americans. This new concept may reconcile and legitimate a broad range of programs that presently appear to be disparate and inconsistent. For these reasons, we find veteranship as an attractive image of the future society to be pursued. By enhancing choice, promoting a new and special status emphasizing entitlement, and creating opportunities for responsible social involvement of older adults, veteranship conceptualizes late life not as inevitable decline but as liberation and fruition in the later years of life.

Some will object, we know, that conferring a special status on elders will have little practical value. They will perceive veteranship and its equating of age with achievement as, at best, a convenient but insubstational rationale. We disagree. Such an objection assumes that living does not really teach; that enduring does not really involve courage, social contribution, and sacrifice; and that surviving is somehow a passive and automatic process. The innocence of such assumptions can be excused only for the very young.

The Committee, with full awareness of the dilemmas for social policy posed by any image of the future society we prefer, affirms that veteranship is a useful perspective from which to develop public policy in the decade ahead.

The following Technical Committee Summaries have been published:

Retirement Income
Health Maintenance and Health Promotion
Health Services
Social and Health Aspects of Long Term Care
Family, Social Services and Other Support Systems
The Physical and Social Environment and Quality of Life
Older Americans as A Growing National Resource
Employment
Creating an Age Integrated Society: Implications for Societal Institutions
Creating an Age Integrated Society: Implications for the Economy
Creating an Age Integrated Society: Implications for the Educational Systems
Creating an Age Integrated Society: Implications for Spiritual Well-Being
Creating an Age Integrated Society: Implications for the Family
Creating an Age Integrated Society: Implications for the Media
Creating an Age Integrated Society: Implications for Governmental Structures
Research in Aging

Experts from various fields were appointed by the Secretary of Health and Human Services to serve on 16 Technical Committees, each charged with developing issues and recommendations in a particular area for consideration as background material for the delegates to the 1981 White House Conference on Aging.